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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2022

Pronounced on : 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.2245 of 2017

Chandrasekar (died)

1.Thangamani

2.Minor Silviya

3.Minor Piyula

4.Minor Sobiya

5.Minor Piraisudan

(Minors 2 to 5 are represented by guardian /
next friend mother 1st petitioner)

6.Backiam

...Appellants/Petitioners

Vs.

1.Kandasamy

2.M.Palanisamy

(Notice to R1 and R2 may be dispensed with for the
time being for which separate petition has been filed)

3.United India Insurance Company Ltd.,

Rep. By its Manager, S.R.S.Towers, 595,
Mettur Mail Road, Bhavani - 638 301.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the MV Act, 1988, against the judgment and decree made in
M.C.O.P.No.169 of 2011 on the file of the Motor Accident Claims
Tribunal - cum- IV-Additional District Judge, Erode District at
Bhavani dated 15.02.2017.



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For Appellants : Mr.C.Kuzhanthaivel
For Respondents : Mrs.P.Vijayalakshmi for
Mr.S.Arun Kumar for R2
R1 - No Appearance

J U D G M E N T

The 2nd and 7th claimants in M.C.O.P.No.169 of 2011, which was on the file of the IV-Additional District Court / Motor Accident Claims Tribunal, Erode at Bhavani are the appellants herein.

2.It must be stated that M.C.O.P.No.169 of 2011 had been filed by one Chandrasekar as claimant seeking compensation for the injuries suffered in a motor accident which occurred on 02.04.2011.

3.On 02.04.2011, at around 12.30 p.m., when Chandrasekar was driving his Yamaha motor cycle bearing registration number TN-33-AR-2085 from Bhavani to Mettur Road, Bhavani Town, VNC corner near Indian Footwear Shop, a tempo Van bearing registration number TN-07-AS-0514 said to have been driven in a rash and negligent manner and coming in the opposite direction had dashed against his motor cycle. Due to the accident, he suffered greivous injuries all over the body. The injuries, which he suffered were as follows:-

- 1.Fracture over the right leg knee, tibia and fibula.
- 2.Fracture over the middle of the head.
- 3.Fracture over the neck.
- 4.Switched wound over the right hand fingers.

4.He was admitted as an inpatient for three months. It was claimed that he subsequently took treatment as an out patient. It was claimed that he was not able to walk, sit, stand or lift any weight and was often suffering from headache and was in an unconcious state. His eye sight had been affected. It must also be stated that at the time of accident, Chandrasekar was aged 42 years and was doing Coolie work. It was claimed that owing to the injuries suffered, he could not continue to do the Coolie work. Claiming compensation of Rs.10,00,000/-, he had filed M.C.O.P.No.169 of 2011.

5.Pending that petition, he died on 09.02.2012.



6. Stating that his death was a direct result of the injuries suffered in the accident, his legal representatives namely, 2nd to 7th claimants had been impleaded to further prosecute the claim petition by order dated 02.10.2012 in I.A.No.1503 of 2012. They joined issue and an amendment was carried out in the claim petition specifically stating that the death of Chandrasekar was only due to the injuries suffered. They sought enhancement of compensation.

7. A counter had been filed by the 3rd respondent / Insurance Company and quite apart from disputing the nature of injuries and the treatments given they also disputed the monthly income of Chandrasekar. They also stated that he had also contributed for the accident. They stated that the claim petition should be dismissed.

8. After amendment by including the 2nd to 7th claimants and seeking enhanced compensation, opportunity was granted to file an additional counter but however, the respondent did not file any additional counter. More than sufficient opportunity had been granted spreading to nearly six months but, additional counter was not filed. The Tribunal thereafter proceeded to record evidence.

9. During evidence, the claimants examined as P.W.1, the 2nd claimant and as P.W.3, Dr.V.K.Sobana, Medical Professional. They also marked Exs.P1 to P12. Ex.P1 was the copy of the First Information Report, Ex.P5 was the copy of the wound certificate, Ex.P6 was the death certificate of Chandrasekar, Ex.P8(series) were hospital and medical bills. Exs.P9 and P10 were discharge summaries. Ex.P11 was CT Scan report and Ex.P12 was xerox copy of the post mortem certificate. Additionally, Ex.X1 was also filed, which was the authorization letter along with Court summons to P.W.3.

10. On the basis of the pleadings and evidence, the Tribunal took up for consideration issues relating to whether the accident had taken place only due to the rash and negligent driving of the Van and whether the death of the 1st petitioner was due to the injuries suffered and whether the claimants were entitled to any compensation and the quantum of compensation and who is to pay the compensation.

11. With respect to the nature of the accident, on a perusal of Ex.P1, copy of First Information Report, which has been registered only against the 1st respondent under Sections 279 and 337 I.P.C, and on Ex.P3, rough sketch of the place of accident and on Ex.P2, observation Mahazar, the Tribunal held that the accident occurred only due to the rash and negligent manner in which, the offending vehicle was driven by the 1st



Tribunal granted the following compensation:-

1.Compensation towards loss of income	: Rs.25,000/-
2.Compensation towards medical expenses	: Rs.2,60,573/-
3.Compensation towards transportation	: Rs.15,000/-
4.Compensation extra nourishment	: Rs.5,000/-
5.Attender charges	: Rs.10,000/-

Total Compensation

: Rs.3,15,573/-

17.Aggrrieved by the aforementioned finding that the death was not due to the accident or the injuries suffered, the present appeal had been filed by the claimants.

18.Heard arguments advanced by Mr.C.Kuzhanthaivel, learned counsel for the appellant and Mr.S.Arunkumar, learned counsel for the 2nd respondent / Insurance Company.

19.The following facts are not disputed, namely:-

1) Chandrasekar suffered injuries in an accident which took place on 02.04.2011 at around 2.30 p.m.

2) the cause of the accident was the rash and negligent manner in which the Tempo Van bearing registration number TN 07 AS 0514 was driven.

3)The nature of injuries suffered by Chandrasekar were:-

"multiple contusions in brain (Right frontal SDH & ICH, left frontotemporal Thin SDH, Frontal EDH, SAH, Contusion frontal lobe), Type 2 Odontoid fracture, fracture of right tibia (Communitied WQ TY2), fracture of right fibula and right medial condyle femur."

20.Ex.P9 is the discharge summary dated 24.04.2011 with respect to the treatment given for the accident to Chandrasekar. He was admitted on 02.04.2011. The final diagnosis was given as follows:-

"Multiple Contusions Brain (Right Frontal SDH & ICH, Left Front of temporal thin SDH, Frontal EDH,SAH, Contusion frontal lobe

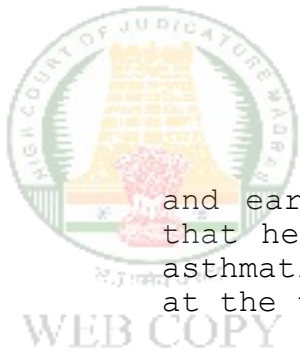
Type 2 Odontoid Fracture

Right tibia (Communitied WQ TY2)

Right fibula; # Right medial condyle femur

Right frontal craniotomy & SDH - ICH Evacuation on 5/4/11.

IM nail righ tibia / CR & Fixation with compression screws right distal femur on 3/4/11."



21. It was also found that there was bleeding in his nose and ears. He also suffered from seizures. It was also found that he was not a hyper tension patient, not a diabetic and not asthmatic. He was said to be aged 42 years. He was unconscious at the time of admission.

22. It was also stated that the CT Brain Scan was taken after 12 hours and after 4 days. The results were as follows:-

"Follow up CT Brain (after 12 hrs) - Right frontal polar SDH - ICH with odema / left basifrontal contusion brain, diffuse SAH contusion left posterior frontal region clot retraction left frontal EDH.

CT Brain (after 4 days):- Right frontla SDH / ICH with odema ventricle squashed.

Patient underwent surgery on 5-4-11.

Right frontal craniotomy - SDH - ICH evacuation."

23. It was also stated that he underwent surgery on 05.04.2011. Right frontal craniotomy was done under general anaesthesia. It was also found that though concscious subsequently, he was on and of consciousness.

24. Thereafter, he was again admitted to the same hospital on 30.04.2011 and discharged on 22.05.2011. The final diagnosis was as follows:-

"Post surgical / Traumatic Mningitis

Post head injury status"

25. He had been admitted with fever for two days. There was decreased responsiveness. There was pain over the right tibial region. There was a review directed after 10 days. It is claimed that he did not go back to hospital. There is no evidence from either side whether he did or did not.

26. The issue now to be examined is whether these injuries could have been the cause for his death.

27. In this connection, reference can be made to an article on Subarachnoid Hemorrhage by Tibor Becske, MD; Chief Editor : Helmo L. Lutsep, MD. It had been stated as follows:-

"The term subarachnoid hemorrhage (SAH) refers to extravasation of blood into the subarachnoid space between the pial and arachnoid membranes (see the image below). It occurs in various clinical contexts, the most common being head trauma. However, the familiar use of the term SAH refers to nontraumatic (or spontaneous) hemorrhage, which usually occurs in the setting of a ruptured cerebral aneurysm or arteriovenous malformation (AVM).



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28.It was further stated as follows:-

Signs and symptoms:-

Signs and symptoms of SAH range from subtle prodromal events to the classic presentation. The most common premonitory symptoms are as follows:-

Headache (48%)

Dizziness (10%)

Orbital pain (7%)

Diplopia (4%)

Visual loss (4%)

Signs present before SAH include the following:

Sensory or motor disturbance (6%)

Seizures (4%)

Ptosis (3%)

Bruits (3%)

Dysphasia (2%)

29.It was also further stated as follows:-

"Brain injury from cerebral aneurysm formation can occur in the absence of rupture. Compressive forces can cause injury to local tissues and / or compromise of distal blood supply (mass effect).

When an aneurysm ruptures, blood extravasates under arterial pressure into the subarachnoid space and quickly spreads through the cerebrospinal fluid around the brain and spinal cord. Blood released under high pressure may directly cause damage to local tissues. Blood extravasation causes a global increase in intracranial pressure (ICP). Meningeal irritation occurs."

30.It was also further stated:-

"Rebleeding of SAH occurs in 20% of patients in the first 2 weeks. The rebleeds in the first days ("blow out" hemorrhages) are thought to be related to the unstable nature of the aneurysmal thrombus, as opposed to lysis of the clot sitting over the rupture site. Clinical factors that increase the likelihood of rebleeding include hypertension, anxiety, agitation, and seizures."

31.It was also further stated:-

"Although mortality rates of SAH have decreased in the past 3 decades, it remains a devastating neurologic problem. An estimated 10-15% of patients die before reaching the hospital. Approximately 25% of patients die within 24 hours, with or without medical attention. Hospitalized patients have an average mortality rate of 40% in the first month. About half of



affected individuals die in the first 6 months. Rebleeding, a major complication, carries a mortality rate of 51-80%."

32. Thus, there is a possibility of death occurring owing to the nature of injuries suffered namely, extravasation of blood into the subarachnoid space between the pial and arachnoid membranes. This evidence would also point out to the fact that the claimant, Chandrasekar having suffered serious head injuries, rebleeding was always possible.

33. The learned counsel for the appellants relied on the judgment of this Court in New India Assurance Co. Ltd., Vs. R. Vijaya Kumar (since died) reported in 2014 (2) TN MAC 685 wherein, this Court while considering a similar issue held as follows:-

"9. In case similar to the case on hand viz., Jothi & another Vs. Viruthasarani & others, 2007 (2) TN MAC 374, wherein the victim of the accident died after about 18 months from the date of the accident, this Court has held as follows:

12. Doctor, P.W.2, deposed before the tribunal that after a perusal of the medical records pertaining to Mannan, he was of the opinion that Mannan's death was due to the injuries received in the road traffic accident. He gave Ex.A-8 Certificate, wherein he mentioned that Mannan died on 12.04.1995 due to post traumatic complications of a road traffic accident, in which he sustained poly trauma, including head injury.

13. As far as this case is concerned, the Court has to very much scan the findings and observations in Exs.A-2 to A-4, A-6 and A-8. A cumulative effect of the said analysis would go to show that Mannan died of head injury, which he sustained in the accident. As evident from Ex.A-2, Mannan suffered a head injury. Though it appeared to be a superficial one, it had got its own impact inside the skull, because he was complaining of giddiness before the doctor in Government Hospital, Madras, after one year. It is also noteworthy to point out that Mannan was referred from Neuro O.P. and, after examination by the doctor, who recorded Ex.A-4, he was again referred back to the same department, namely, Neuro O.P. The fact that he sustained head injury is far from any doubt. There is no evidence available with the appellants that Mannan met with his death due to some other reasons. The injured was aged about 50 years at the time of accident and had there been any other reason for his death, it might have been unearthed by the Insurance Company after the claim petition was amended for



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enhanced compensation after the death of Mannan, by appointing its own investigators. The silence on the part of the Insurance Company has to be noted. Preponderance of probabilities in this matter goes a long way to establish that Mannan died owing to the injuries, which he received in the road traffic accident and not by any other means. Hence, the finding of the tribunal in this regard deserves to be confirmed.

10. In the present case also, the deceased had sustained head injuries, multiple brain contusions and speech impairment apart from multiple injuries all over the body. There is also no evidence on the side of the Insurance Company to prove that the death was due to some other reasons. No ill-health was attributed to the deceased by the Insurance Company. At the time of the accident, the deceased was 41 years old and he died at 43. Hence, the Theory of Preponderance of Probabilities as laid down in the above decision has to be adopted in the present case also and it has to be concluded that the victim of the accident died due to the injuries he sustained in the accident.

11. With regard to the quantum, it is found that P.W.2, a co-employee of the deceased has spoken to the effect that he is earning about Rs.15,000/- per month, and the deceased also might have earned equally had he been alive. Therefore, the Tribunal has rightly fixed a reasonable monthly income of Rs.3,000/- after deducting 1/3rd towards Personal Expenses, but, adopted a wrong multiplier of 15, whereas the correct Multiplier for the age group of 41 to 45 as provided in Sarla Verma & Others Vs. Delhi Transport Corporation & another, 2009 (2) TN MAC 1, is only 14. Hence, adopting the proper Multiplier of 14, the Loss of Earning is arrived at Rs.5,04,000/- (Rs.3,000 X 12 X 14). However, the Tribunal has awarded a sum of Rs.10,000/- towards Funeral Expenses. In the decision reported in Rajesh Vs. Rajbir Singh, 2013 (2) TN MAC 55 (SC) : 2013 ACJ 1403, the Honourable Apex Court has held in Para 21 as follows:

"We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of Compensation under the head 'Funeral Expenses'. The 'price index', it is a fact, has gone up in that regard also. The head 'funeral expenses' does not mean the fee paid in the crematorium or the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular



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religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/."

34.The learned counsel for the appellants also relied on the judgment in Abdul Rahim and another Vs. Sundaresan and another reported in 2011 ACJ 2197 wherein, held as follows:-

"20. The conjoint reading of evidence of P.W.3 and the medical records would undoubtedly reveal that the victim sustained injuries in the accident and the injuries were inflicted / caused in the brain as deposed by P.W.3 and proved by Exhs. P2 and P8 and the death was caused due to the injuries caused in the brain. Hence, the death was only due to the accident and the claimants are entitled for compensation and the finding of the Tribunal that the claimants did not prove that the death of the victim was due to the accident is set aside for the reasons stated above.

23.As rightly held by Hon'ble Andhra Pradesh High Court, this is also not a case under section 302, Indian Penal Code, and here also P.W.3, doctor, deposed and Exhs. P2 and P8 were marked to prove the cause of death, viz., the injuries caused in the accident. Hence, the non-doing of post-mortem on the body of the deceased would not be a ground to deny the compensation to the claimants. Apart from that there is no contra or rebuttal evidence adduced on the side of the respondent against the evidence already adduced by the claimants. Hence, this court finds that non-doing of post-mortem is not a ground to deny the benefits to the claimants. Hence, this Court holds that the death of the deceased occurred only due to the injuries caused to the deceased in the accident.

24.As far as the negligence is concerned, the Tribunal in para 5 of the award rightly concluded that the accident was due to negligence of the respondent No.1's driver. To arrive at the aforesaid conclusion it relied upon PW1's evidence and the evidence of PW2, who was the eye witness. There is no appeal by the insurance company challenging the finding in this regard. Even in the absence of appeal, this Court opined that only based on the available evidence, the Tribunal rightly concluded that accident occurred due to negligence of respondent No.1's driver."



35. The learned counsel for the appellants further relied on the judgment in National Insurance Co. Ltd., Vs. Anthony alias Rakesh (since deceased) and others reported in 2014 (1) TN MAC 384 wherein, this Court had held as follows:-

9. The ratio in the judgments reported in Vatsala & others V. Meenakshi, 2005(1) TN MAC 62 (DB): 2005 (1) LW 560; Maricar Motors Ltd. V. Neelambam 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. In the present case, as found by the Tribunal, Exhibits P4 to P10 were marked to show that the deceased was continuously taking treatment. The period of treatment is immaterial. The argument put forth by the Counsel for the 2nd respondent that the claim petition ought to have been dismissed as abated is unsustainable and right away rejected. Even if the death is not due to the injuries, the Legal Heirs of the injured persons would be entitled to press for the claim on the account of loss to the estate of the deceased, medical treatment, conveyance, special diet. However, in the instant case, the legal heirs of the deceased have impleaded themselves and claimed that the death of the deceased occurred only due to the septicemia because of infections in the injured areas. No contradictory evidence was let in on behalf of the 2nd respondent. The provisions of the Motor Vehicles Act itself contemplates payment of compensation to the legal heirs or to the victim as the case may be. Hence, the Tribunal was right in permitting the amendment and deciding the claim application.

11. The next contention of the counsel for the 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. ...



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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, Indian Penal Code, 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 P4 to P10 also reveal the presence of infection which is also corroborated by the evidence of PW3. 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 P4 to P10."

36. The learned counsel for the appellants also relied on judgment in *Govind Singh and Others Vs. A.S. Kailasam and Another* reported in wherein, it is stated as follows:-



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"9. The finding that the accident was due to the negligence of R.W. 2 necessitates the further question concerning the cause of Heera Bai's death. It is common ground that Heera Bai sustained only a simple injury, viz., a laceration on her left foot and the injury, by itself, was not at all fatal. The evidence discloses that Heera Bai developed tetanus in spite of receiving treatment at the hospital as an out-patient till 20-6-1967 and thereafter, as an in-patient till her death on 22-6-1967. The learned counsel for the first respondent would argue that tetanus infection must have occurred due to other causes than the injury sustained by Heera Bai in the accident and therefore, her death ought not to be held consequential to the injury sustained by her in the accident. In support of this contention, the first respondent's counsel points out that, while Heera Bai sustained only one injury in the accident, viz., a lacerated wound, 10 c.m. x 1 c.m. along the lateral border of left foot, as described in Exhibit P-7, the appellants have set out as many as seven injuries in their petition and therefore, it must be concluded that the other injuries described in the petition must have been caused subsequent to the accident and a further inference drawn that tetanus infection must have been caused by one of those supervening injuries. This contention is devoid of any merit. It is, no doubt, true the appellants have described in the petition that Heera Bai had seven injuries on her person at the time of her death. But, some of those injuries, cannot really be considered injuries in the strict sense of the term, and, at any rate, the enumeration of the several injuries is clearly ascribable to the anxiety of the appellants to buttress their case in as many ways as possible. Another contention of the first respondent's counsel is that P.W. 5 has stated that Heera Bai's wound had become infected and therefore she was given a course of five injections and as such, it must be inferred that the negligence of Heera Bai must have caused infection to set in the wound. This contention is without any basis. It is not in evidence that Heera Bai did anything by herself to the wound and such foolish act resulted in the wound becoming infected. Lastly, it was argued that no autopsy had been done on Heera Bai's dead body and therefore, it is not possible to give a definite finding that her death was due to tetanus resulting from the injury sustained in the accident. Here too, the contention must be disregarded because the definite evidence of the doctors is that Heera Bai's death was due to tetanus and the infection had been brought about by the injury sustained in the accident. A stray answer from P.W. 5 in cross-examination that he cannot correctly set out the cause of death without a post-mortem certificate is clutched at by the first respondent's counsel to contend that there is no



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conclusive evidence in the case to prove that Heera Bai's death was only due to tetanus. This answer cannot be availed of because innumerable clinical circumstances lead to the irresistible conclusion that the death was solely due to tetanus infection. The out-patient chits, Exhibits P-3 and P-4, as well as the case-sheet Exhibit P-8, disclose that Heera Bai complained of symptoms of lock-jaw, which is attributable only to tetanus from 19-6-1967 onwards. She had complained of inability to speak and on 20-6-1967, the doctors found that she was unable to open her mouth fully and swallow solids or liquids. From about 19-6-1967 she was also found to have spasms. The doctors had diagnosed her complaint as one of tetanus infection and treated her for that. There can, therefore, be no doubt as regards the cause of death. 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, on autopsy is not an indispensable test to determine the cause of death.

10. Learned counsel for the first respondent, arguing in this behalf, would contend that since Heera Bai had been given anti-tetanus serum on the date of the accident itself, it is improbable that she would have developed tetanus and on that score also, a doubt must be entertained as to whether her death was due to tetanus resulting from the injury sustained by her in the accident. This is also a fallacious argument. P.W. 4 the Casualty Medical Officer and P.W. 5 the Surgical Registrar, have both stated that there is always a possibility of tetanus infection setting in despite administration of anti-tetanus serum, and in the face of such evidence of competent witnesses, it is a vain contention of learned counsel that there was every possibility of Heera Bai having died due to natural causes or other unforeseen causes than due to tetanus infection. Incidentally, it may be stated here that since Heera Bai sustained an open wound in the accident, the wound was vulnerable to the setting in of tetanus as the affliction is always associated with any bleeding injury. In these circumstances, there is no difficulty whatever in reaching the conclusion that the tetanus infection which brought about the death must be directly attributed to the injury sustained by Heera Bai in the accident. The cause of death is not a remote or unconnected one with the injury sustained by the deceased, but is a foreseeable and not an uncommon development. 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. I may only refer to a few decisions on this aspect of the matter.



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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 ptychocoele and lacerated appendix. The victim was



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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".

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 Tribunal's reasoning and conclusion on this aspect of the matter is clearly erroneous and I have no hesitation in holding that Heera Bai's death was due to causes directly connected with the injury sustained in the accident.

12. Having held that the accident was due to the negligence of the first respondent and Heera Bai's death was a result of the injury sustained by her in the accident, the immediate question for consideration is whether the second respondent is, in any way, liable to answer the claim of the appellants for compensation. It is not disputed that though the first respondent purchased the car from Radhakrishna Pai on 28-3-1967, the second respondent endorsed the insurance policy in favour of the first respondent only with effect from 26-6-1967. Adopting a wrong line of reasoning, the Tribunal has held that the policy, being one and the same, remained in force throughout the insurance period, viz., 24-18-1966 to 23-12-1967, and consequently, the policy would be operative even prior to the date of endorsement in first respondent's favour. It is by now well settled that in motor vehicle's insurance policies, the motor vehicle is the subject-matter of the insurance and the policy of insurance will be subsisting and will be operative only so long as the insured has the ownership of the vehicle. The moment there is any change in circumstances, such as the insured parting with the ownership of the vehicle, the contractual liability of the insurer will cease to be operative and enforceable.



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Insurance policies, being uberrimae fidei contracts, are governed by utmost faith in each of the contracting parties, and once the insured ceases to be the owner of the subject-matter of the insurances, viz., the motor vehicle, there is an automatic cessation of the liability of the insurer from the moment the insured ceases to be the owner of the vehicle. It is fully realising this state of affairs that the first respondent hesitantly projected a contention before the Tribunal that he informed the second respondent of his acquisition of the vehicle, even on 26-6-1967 under the original of Exhibit R-1. The second respondent has, however, denied the receipt of the original of Exhibit R-1, and there is no reason to suspect the statement of the second respondent in this behalf. Whatever it be, the first respondent has accepted the endorsement of the insurance policy in his favour only with effect from 26-6-1967 as borne out by Exhibit R-3 and it is not, therefore, open to the first respondent to contend that, notwithstanding the endorsement, Exhibit R-3, the policy of insurance was enforceable by him during the anterior period.

13. To safeguard its interest, the second respondent has filed the memorandum of cross-objections and raised the contention therein that, in any event, the second respondent is not liable to meet the claim of the appellants. A feeble objection was raised by the counsel for the appellants as well as the first respondent about the maintainability of the memorandum of cross-objections. This objection is certainly untenable. In *Union Cooperative Insurance Society Ltd., Tuticorin v. Lazarammal*, C. M. A. No. 55 of 1969 of this court judgment dated 30-7-1973 = (Reported in) a Bench of this court has held that, as an appeal against the order of the Tribunal lies to the High Court and not to any other Tribunal constituted under the Statute, all the rules in Code of Civil Procedure would be applicable to such an appeal and consequently, the right to file a memorandum of cross-objections against the impugned order is available to any of the aggrieved respondents. Such being the case, the memorandum of cross-objections has to be allowed and the second respondent exonerated from any liability to pay compensation to the appellants for the death of Heera Bai.

14. The only question left over for consideration is, what is the compensation amount to be awarded to the appellants. The appellants have made an avaricious claim of Rs. 10,000. The circumstances and evidence really stand in the way of the appellants being granted such a high compensation. Heera Bai must have been aged about fifty years at the time of her death, though P.W. 1 has stated in his evidence that she was forty years of age when she died. In the hospital records Heera Bai's age has been noted as fifty



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years and this information must have been furnished to the authorities by Heera Bai herself. I therefore fix the age of Heera Bai as fifty years at the time of her death and further hold that, but for the accident she would have lived for another ten years more. When she was alive, she was carrying on trade as a vegetable and fruit-vendor. To sustain the claim for Rs. 10,000 P.W. 1 has stated that Heera Bai was earning Rs. 10 to Rs. 12 per day and the entire family was being supported with her earnings. Here again, the falsity of his evidence is proved by the entries in the hospital records. Those records show that Heera Bai's monthly income was only Rs. 60. Deducting a sum of Rs. 25 for her own expenses, it can be held that she would have been providing the family only a sum of Rs. 35 per mensem. At that rate, the total benefit the family would have received during a period of ten years would be about 4,200. Deducting a sum of Rupees 1,200 for lump sum payment, uncertainty of life etc. the net compensation that can be awarded to the appellants will be Rs. 3,000. The Tribunal has not fixed the age of Heera Bai correctly, nor has it made any deduction for lump sum payment, uncertainties of life etc. Therefore, the quantification of the compensation by the Tribunal at Rs. 6,500 cannot be upheld."

37.The reasoning is that if there is some evidence showing nexus between the accident and the death, irrespective of the time period between the two, and if medical texts hold that there is possibility of death owing to the nature of the injuries suffered, then, the benefit should accrue to the claimants and compensation should be granted by the Tribunal in accordance with consideration of each case taking the accident to be fatal in nature.

38.This particular examination has to be done by the Tribunal based not only on the evidence produced before it but also on a careful examination of the nature of the injuries suffered and, further examining whether such injuries could be a cause for the death and to determine that fact, the Tribunal should arm itself with knowledge of medical jurisprudence base its and finding on such material and not just on the evidence adduced.

39.Section 169 of the Motor Vehicles Act, 1988 stipulates that the powers of a Civil Court is vested on the Tribunal during the course of the recording of evidence and taking recourse to such power given in the statute, the Tribunal should, on its own motion seek the assistance of an expert opinion particularly, by issuing summons and seeking clarifications on this particular issue. The Tribunal must



always keep in mind that the object of a claim made is to ensure that just compensation is granted for the injuries suffered or to the family of the deceased, particularly when, the vehicle involved is insured with an Insurance Company. The policy of insurance places an obligation on the insurer to indemnify any loss caused owing to an accident, either to the vehicle or to any third party and while examining such aspect, the Tribunal should attempt to take another step forward to determine just compensation on the facts presented before it.

40. In view of the medical jurisprudence extracted above and the evidence presented indicating that there was a possibility of the injuries being reasonable cause for the death of the Chandrasekar, I would set aside the order of the Tribunal dated 15.02.2017 and remand the matter back for fresh consideration.

41. The Tribunal is always at liberty to issue summons to competent experts to give an opinion the basis of the available records, on the nature of injuries suffered and whether such injuries could be a possible cause for the death of Chandrasekar. I am conscious that the post mortem certificate, which had been produced does not give such an opinion with respect to the death being the result of the injuries suffered but a discussion of the same can be done only on the basis of the injuries suffered and not on the basis of a post mortem report.

42. The order of the Tribunal is therefore, set aside with the aforesaid directions. The matter is remanded for fresh trial in manner known to law. On remand, the Tribunal is directed to dispose of M.C.O.P.No.169 of 2011 on or before 31.03.2023, after going through the process of trial again following the principles of natural justice by affording opportunities to all parties to adduce fresh evidence.

43. Registry is directed to return the original records back to the Tribunal within a period of two weeks from the date of receipt of a copy of this order.

44. This Civil Miscellaneous Appeal is allowed with the above observations. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar



kkn

To:-

1.The IV-Additional District Court,
Motor Accident Claims Tribunal,
Bhavani, Erode District.

2.The Section Officer,
E.R.Section, High Court,
Madras.

(with a direction to return
the original records back
to the Tribunal)

+lcc to Mr.C.Kulanthaivel, Advocate SR. No. 30536
+lcc to Mr.S.Arunkumar, Advocate SR. No. 30482

CMA.No.2245 of 2017

RLD (CO)
PR (25/05/2022)