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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE Mrs.JUSTICE **R.KALAIMATHI**

C.M.A.No.2647 of 2021
and CMP.No.15140 of 2021

The Manager,
United India Insurance Co. Ltd.,
No.153, J.N.Road,
Thiruvallur-602 001.
Now at
United India Insurance Co. Ltd.,
No.134, 4th Floor, Motor 3rd Party Claims Hub,
Silingi Buildings,
Greams Road, Chennai-6.

... Appellant

Vs.

1. Bharathamani
2. Minor Reshma
3. Minor Thishika
   (Minors rep. by their father & N.G.Bharathamani
   the 1st petitioner herein)
4. N.Ravi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Order and decreetal order dated 27.11.2020 in MCOP.No.96 of 2018 passed by the Special District Judge

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No.1, MACT, Thiruvallur, and allow the above CMA.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Ms.A.Subadra
for Ms.M.Malar for R1 to R3
: R4-No Appearance

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J U D G M E N T

[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]

The Insurance Company is on appeal, challenging the award made in M.C.O.P.No.96 of 2018 on the file of the Motor Accident Claims Tribunal, Special Court No.1, [District Judge cadre], Thiruvallur.

2. The claimants, who are the legal heirs of one Hemalatha, who died in a road accident that occurred on 12.06.2017 claimed that the accident occurred due to the rash and negligent driving of the rider of the two wheeler bearing Registration No.TN-20-BD-7771, when it collided with the two wheeler in which the deceased was travelling as a pillion rider with her friend. The claimants also contended that the injuries suffered by her at the

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accident namely a fracture of iliac bone, femur and knee bones, were the cause for the deceased developing urinary tract infection and septicemia which lead to the death. The claimants had further pleaded that though the death occurred almost a year after the accident, the cause of death was directly related to the accident and therefore, the Insurance Company is bound to compensate them.

3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was also the plea of the Insurance Company that the cause of death has no nexus to the injuries sustained in the accident and therefore, the Company cannot be made liable to pay the compensation for the death.

4. Before the Tribunal, the claimants had produced Exs.P1 to P13. They had also examined PW1/the 1st claimant and PW2 & PW3. PW3/Doctor at Royapettah Government Hospital, who had spoken about the reason for the death from the records. On the side of the Insurance Company, RWs 1 & 2 were examined and the Policy and the Accident

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Register were produced as Exs.R1 & R2.

5. The Tribunal, on a consideration of the evidence on record, concluded that the death is directly relatable to the injuries suffered at the accident and determined the compensation at Rs.28,45,592/-. The Tribunal awarded a sum of Rs.27,50,592/- towards loss of earning capacity, Rs.15,000/- each towards loss of estate and funeral expenses, Rs.40,000/- towards loss of consortium and Rs.25,000/- towards medical expenses.

6. Mr.P.Sankaranarayanan, learned counsel appearing for the Insurance Company would vehemently contend that the death having happened almost a year after the accident, cannot be said to be because of the accident. The learned counsel would also draw our attention to the medical records, which have been placed before the Tribunal to buttress his submission.

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7. Contending contra, Ms.A.Subadra, learned counsel appearing for Ms.M.Malar, would contend that the medical records, particularly Ex.P13 would show that the injuries suffered at the accident were treated on various dates and surgeries were performed in August 2017 as well as January 2018. The cause of death namely septic shock and septicemia as well as urinary tract infection are directly relatable to the injuries suffered at the time of the accident. Pointing out that the there were fractures in all major bones, the learned counsel would contend that there cannot be any other reasons for the deceased developing septicemia and urinary tract infection.

8. We have considered the rival submissions. We have also looked into the contents of Ex.P13. Ex.P2 the Accident Register shows that the deceased has suffered fracture of thigh bone, iliac bone, shaft of femur and the acetabulam bone. These are all major bones and fracture of each of these bones is a very serious injury. It is also seen from Ex.P13 that the deceased had undergone a surgery on 22.08.2017 and she was discharged on 04.09.2017. The details of the surgery would show that apart from aligning the fragment of bone, bone grafting was also done. It is also seen

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that another bone grafting was done during the month of January, 2018. Ex.P13 further discloses that the deceased had complained of fever, vomiting and passage of loose stools for three days. She was first treated for fever and then shifted to the ICMU since her condition worsened. PW3 the Doctor has opined that the fever could be a result of septicemia, which had occurred due to the surgery that was performed earlier. Though PW3 has said that he is deposing from the documents and he has not treated the deceased, being a Government Doctor, his evidence is entitled to more credence. PW3 has said that there is a chance of a person, who has undergone bone grafting suffering from septicemia leading to high fever and that being the cause of death. The Tribunal has analyzed the evidence of PW3 along with the contents of Exs.P2 and P13 to conclude that the cause of death was due to the injuries suffered at the accident. We therefore, do not find any reason to take a different view even though the accident and death are separated by almost a year in the light of the cogent evidence that has been made available in the case on hand. On the quantum also, we do not find any reason to take a different view, since the Tribunal has taken the income of the deceased at Rs.15,349/- as notional income on the basis of the

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formula based on the cost and inflation defect. We are unable to fault the Tribunal for adopting such an approach and hence, we do not find that the quantum is excessive. Hence, the Civil Miscellaneous Appeal fails.

9. In fine, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.J.,) (R.K.M.J.,)
14.07.2023

Index : No

Speaking order: No

Neutral Citation Case :No

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To

1. The Special District Judge No.1,
   Motor Accidents Claims Tribunal,
   Thiruvallur.

2. The Section Officer,
   VR Section High Court,
   Madras.

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