IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **27.09.2023**

PRONOUNCED ON : **09.10.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2687 of 2022
and
CMP No.21062 of 2022

M/s.National Insurance Co. Ltd.,
Branch Office at No.803A, 8th Floor,
Tower-C, Connectus Buildings,
Opposite New Delhi Railway Station,
Bavbhuti Marg, New Delhi – 110 002.
Branch Office at No.930, Sathi Salai,
Gandhipuram, Coimbatore – 641 012 ...
Appellant

Versus

Balasubramanian (Deceased)
1. Malarvizhi
2. Natesan
3. Saraswathi ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.09.2022 in MCOP No.876 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Coimbatore.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.Ma.P.Thangavel
For R2 & R3 : Notice served and no appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company, challenging the award of the tribunal, granting compensation to the 1st respondent.

2. One Balasubramanian filed the claim petition stating that on 24.08.2017 at about 8.30am, while he was travelling as a passenger in a car driven by the 2nd respondent herein, the 2nd respondent lost control of the car and rammed the car into a palm tree, as a result of which, the said Balasubramanian sustained grievous injuries. On 18.03.2018, the said Balasubramanian died. The 1st respondent impleaded herself as the petitioner in the claim petition and sought for compensation for the death of her husband i.e. Balasubramanian.

3. The driver of the car,the 2nd respondent herein and the owner of the car, the 3rd respondent herein, remained exparte before the tribunal.

4. The appellant-Insurance Company filed a counter stating

that the accident did not take place in the manner alleged in the claim petition and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5. The 1st respondent herein examined herself as PW1 and examined three other witnesses as PW2 to PW4. The 1st respondent also marked Ex.P1 to Ex.P12. The appellant-Insurance Company did not examine any witness nor mark any document. Ex.C1 to Ex.C5 were marked as Court exhibits.

6. The tribunal after considering the oral and documentary evidence held that the accident took place due to the negligence of the 2nd respondent herein; that the 1st respondent has established that the deceased died due to the injuries suffered in the accident and directed the appellant to pay a sum of Rs.15,20,096/- as compensation to the 1st respondent herein.

7. The learned counsel for the appellant-Insurance Company submitted that the award of the tribunal is erroneous, since the 1st respondent had not established that the deceased died due to the

injuries suffered in the accident; that the 1st respondent had not established the nexus between the accident and death; and the

medical records reveal that the accident took place only due to a cardiac arrest. Ex.P6, the death summary dated 20.03.2018 confirms the said fact. Therefore, the learned counsel submitted that the tribunal ignored the maxim, 'a*ctio personalis moritur cum persona'* and the 1st respondent is not entitled to compensation under the various heads awarded by the tribunal. The learned counsel therefore submitted that the 1st respondent at best could claim medical expenses incurred for treating the injury sustained by the deceased.

8. The learned counsel for the appellant-Insurance Company relied upon the judgment of this Court in 2021(1) TN MAC 574 ***[Senthil Kumar (died) and four others vs. Jothivel and another]*** in support of the submission that if there is no direct medical evidence to connect the death to the injuries, then the claim petition should be treated as a case of personal injury and not as a fatal accident case.

9. The learned counsel for the 1st respondent/claimant per contra submitted that the nexus between the accident and the death need not necessarily be established by direct evidence; that the said fact can be established by circumstances and the standard of proof is preponderance of probability; that the deceased was healthy prior to the accident and was aged 61 years at the time of accident; that it was enough if the claimants established that the death was due to the consequential effect of the accident; that the absence of postmortem certificate cannot be a reason to deny the claim of the 1st respondent. The learned counsel further submitted that even though the medical record reveals that the deceased died due to cardiac arrest, the nexus between the accident and the death can be inferred from the nature of injuries and treatment found in the medical records. The tribunal had rightly found that there was nexus and awarded compensation and therefore, the learned counsel for the 1st respondent prayed for dismissal of the appeal.

10. Though notice has been served on appellants 2 and 3 and their names are shown in the cause list, none appeared on their behalf.

11. Heard the learned counsel for the appellant-Insurance Company and the learned counsel for the 1st respondent.

12. The only question involved in the instant appeal is whether the tribunal was right in holding that the deceased died due to the injuries suffered in the accident?

13. The 1st respondent examined herself as PW1. The discharge summary Ex.P4, reveals that the deceased suffered the following injuries

> "POLYTRAUMA
> T11-T12 TRANSLATION INJURY ASIA A NEUROLOGY
> HEAD INJURY – LEFT SUBARACHOID PARIETAL RIGHT 3-7TH
> RIB FRACTURE, HEMORRHAGE,
> RETROPERITONEAL HEMATOMA
> DIABETES MELLITUS.

and a surgery was performed for 'D9-L1 POSTERIOR INSTRUMENTED STABILIZATION D11-12 DECOMPRESSION'. Thereafter, he was admitted in the hospital again on 18.09.2017 for rehabilitation. He was in the hospital for a month or so. Once again it is seen from the death summary-Ex.P6 that he was admitted on

14.03.2018 for treatment of bed sore, abdomen pain, loss of appetite, less urine output and loose stools. He was treated for the wounds and the bed soar. Thereafter, he died due to cardiac arrest at the hospital on 20.03.2018.

14. The evidence of PW1, the wife of the deceased/1st respondent herein confirms the fact that the deceased was taking continuous treatment for the injuries suffered by him. She had also stated that the deceased developed bed sore as he could not move out from his bed. Further, his liver and kidneys were affected due to the medicines taken for treatment of the injuries. Nothing was elicited on behalf of the appellant-Insurance Company in the cross examination, to discredit her evidence.

15. It is trite law that the claimants need not establish through direct evidence that the death took place only due to the injury suffered in the accident. The said fact can be proved by the circumstances and the standard of proof is by preponderance of probability. Although in the instant case, cardiac arrest has been shown as the cause for death, the nature of injuries and the treatment taken by the deceased, as elaborated in the death summary, would

show that the injuries and its effect has led to the cardiac arrest. Further, there is nothing on record to show that the deceased had suffered from any other ailment. As stated earlier, the deceased sustained severe head injuries in the accident. He underwent a surgery and was in and out of the hospital thereafter.

16. In a case reported in **2015(1) TNMAC 507** ***[National Ins. Co. Ltd., Vs. Perumayee & Others],*** this Court held that where the deceased committed suicide due to the trauma she suffered on account of the injuries suffered in the accident, the death is proximate to the injuries and awarded compensation on that basis.

17. In a recent judgment reported in **2021 SCC OnLine SC 691** ***[Oriental Ins.Co. Ltd. - Vs. Kahlon @ Jasmil Singh]***, the Hon'ble Supreme Court had held that even assuming that the claimants were unable to establish the nexus between the injury and the death, the claimants/heirs would be entitled to compensation for loss of estate, which includes expenditure on medicines, treatment, diet, attendant, Doctor's fee etc., including income and future

prospects. The relevant paragraph is extracted for better understanding.

> "20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee etc., including income and future prospects, which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased"

18. Therefore, this Court is of the view that the award of compensation by the tribunal to the 1st respondent is just and reasonable and it cannot be said to be perverse so as to warrant any interference by this Court in an appeal. Hence, the Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

09.10.2023

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Index: Yes/No
Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J.

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To

1. The Motor Accidents Claims Tribunal,
   Special Sub Court, Coimbatore.

2. The Section Officer,
   VR Section,
   Madras High Court,
   Chennai – 600 104.

Pre-delivery Judgment in
C.M.A. No. 2687 of 2022

Dated: 09.10.2023