BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2023

PRONOUNCED ON : 04.05.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.297 of 2018
and C.M.P(MD).No.4136 of 2018

The Manager
ICICI Lombard General Insurance Company Ltd.,
Door No.11/1B, Opposite to Ponmeni Bus Stop
G.V.Complex
Madurai Bye-pass Road
Madurai District ... Appellant

vs.

1.Sivagami

2.Sugapriya

3.Murugaiyan ...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree dated 05.07.2017 in MCOP.No.196 of 2016 on the file of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Sivagangai and allow this Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1 & R2	: Mr.P.Selvakamatchi
For R3	: No appearance

JUDGMENT

The above appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Sivaganai in MCOP.No.196 of 2016 on the ground that the death was no way connected with the accident.

2.According to the claimants, the deceased was a native of Sivagangai District, but temporarily residing at Thiruvallur for the purpose of carrying out temple renovation work. On 11.02.2015 at about 3.15 p.m, when he was travelling in an Auto with the help of one Hemamalini, the said Auto driver had driven the vehicle in a rash and negligent manner and it got capsized. The deceased was injured all over the body and he was admitted to Thiruvallur Government Medical College Hospital and later referred to Rajiv Gandhi Hospital at Chennai where he passed away.

3.According to the claimants, the deceased was engaged in a temple renovation work and he was earning a sum of Rs.15,000/- per month and he was maintaining the family. Therefore, the claimants have sought for a sum of Rs.20,00,000/- as compensation.

4.The owner cum driver of the Auto had remained exparte and the insurance company had filed a counter contending that the deceased had not sustained any external or internal injury due to the capsizing of the Auto. They have further contended that the deceased was suffering from coronary artery disease and he had passed away only due to the said disease and not due to the accident. The insurance company had further contended that the claimants have to prove nexus between the alleged injury and the death of the deceased. The insurance company had also questioned the quantum prayed for by the claimants.

5.The Tribunal after considering the oral and documentary evidence of PW1 and PW2, Exhibit P1-F.I.R and Exhibit P11-charge sheet, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the first respondent. The Tribunal after considering the evidence of the Doctor who was examined as RW1, arrived at a finding that the deceased was travelling in the Auto for taking treatment for his chest pain. In view of the accident, he had suffered mental shock and his Blood Pressure had got reduced. If the deceased had reached the hospital without any accident, he had chances to live for more years. Based upon the said findings, the Tribunal concluded that the deceased had died due to the sudden accident when he was already having chest pain.

6.The Tribunal had further found that the Auto driver was not having a badge at the relevant point of time and therefore, he was not having a valid and effective driving license at the time of accident. The Tribunal had proceeded to fix the quantum of Rs.5,35,000/- after fixing the notional monthly income at Rs.7,500/-. This award is under challenge in the present appeal.

7.The learned counsel appearing for the appellant/insurance company had contended that Exhibit R1 is the Accident Register prepared by the Doctor who was examined as RW1. As per the said Accident Register, the deceased after reaching the hospital had informed the Doctor that he had developed chest pain around 08.30 a.m and when he was on the way to hospital in the Auto, the accident had happened. As per F.I.R and the claim petition, the accident had happened at 3.15 p.m. The said timing recorded in the F.I.R is incorrect, in view of the fact that the deceased was admitted to the Government Hospital, Thiruvallur at 11.15 a.m on the said day. One Nalini associated with the temple renovation work, had followed the deceased in an another Auto and she was examined as PW2. According to her deposition, originally the deceased was taken to a private hospital at Chevvaipettai. Since the Doctor was not available there, he was again brought back to Thiruvallur Government Hospital. Only while returning back to Thiruvallur, the Auto met with an accident. Therefore, the learned counsel for the appellant had contended that the deceased had started from home at 08.30 a.m itself and he had travelled 9 k.m up to Chevvaipettai and he had returned to Thiruvallur back. Hence, the findings of the Tribunal that if the deceased had reachrd hospital in time, he could have been saved is not factually correct.

8.The learned counsel for the appellant had contended that Exhibit P4-postmortem report will clearly show that there are no external or internal injury seen anywhere in the body and the said report also points out that the deceased would appear to have died of coronary artery disease. He had further pointed out that even before boarding the Auto, the deceased had chest pain and on reaching the hospital, he had informed the Doctor about his chest pain and thereafter, he had passed away. Hence, according to the learned counsel for the appellant, the accident has no nexus whatsoever with the death of the deceased and therefore, they are not liable to pay any compensation.

9.Per contra, the learned counsel appearing for the respondents had contended that the deceased had already developed chest pain at home and he was rushing to the hospital. In the midway, he met with an accident and the Auto got capsized. Due to the said accident, he was disturbed a lot and his pulse rate had gone down. Since he reached hospital with a huge delay, he could not be saved. Therefore, there is a nexus between the accident and the death and hence, the award of the Tribunal is sustainable.

10.I have considered the submissions made on either side and perused the materials available on record.

11.A perusal of Exhibit R1-Accident Register would clearly show that the deceased after reaching the hospital had informed the Doctor that he had developed chest pain at 08.30 a.m. One of the associates of the deceased who was examined as PW2 had deposed that the deceased was taken to a private hospital at Chevvaipettai and thereafter, he was again brought back to Thiruvallur. Therefore, it is clear that the deceased was not travelling directly from home to Thiruvallur Government Hospital.

12.A perusal of the postmortem certificate reveals that there are no external injuries in the body of the deceased. It further points out that the deceased would appear to have died of coronary artery disease. The Doctor who has given treatment to the deceased has been examined as RW1. In his chief examination, he has pointed out that the blood pressure was very low when he was admitted in the hospital and the E.C.G revealed that the deceased had chances of suffering from heart-attack. He had also pointed out that there were no external injuries on the deceased person. During the cross examination, he had submitted that even without any external injuries, the accident would have caused shock to the deceased and because of that shock, the patient would have also died.

13.A combined perusal of Accident Register, Postmortem Certificate, deposition of PW2 and the deposition of Doctor, it is clear that the deceased had developed chest pain, at about 08.30 a.m and after making an attempt to get admitted in a private hospital at Chevvaipettai, they returned back to Thiruvallur to reach Government Hospital, Thiruvallur. Only on the returning way, the Auto got capsized. There are no external injuries in the body of the deceased person. In fact, after reaching the hospital, the patient was conscious and he was oriented and he had answered the Doctor that he had a chest pain at 08.30 a.m. The E.C.G revealed that the patient had chances of heart-attack. Only due to the said chances of heart attack, the Doctor at Thiruvallur Government Hospital had referred him to Government Rajiv Gandhi Hospital at Chennai for further treatment. It is contended that the patient had died only in Government Rajiv Gandhi Hospital at Chennai. However, no records have been produced to establish the cause of death. The postmortem certificate which is marked as Exhibit P4 discloses the cause of death as coronary artery disease.

14.The insurance company is liable to pay compensation for the injury or death arising out of use of motor vehicles or damages to any property of a third party. In the present case, admittedly, there was no external or internal injury arising out of the use of motor vehicle. As per the Accident Register and the postmortem report, it is clear that the patient had developed chest pain even before boarding the auto and he was referred to Government Rajiv Gandhi Hospital at Chennai only due to the fact that he had chances of an heart-attack. The postmortem report also reveals that he had died only of coronary artery disease and not due to any external or internal injuries.

15.The Hon'ble Supreme Court in the judgement reported in ***(2019) 6 SCC 64 (Alka Shukla Vs. Life Insurance Corporation of India)*** which arises out of an order of National Consumer Disputes Redressal Commission **(NCDRC),** which had rejected the claim under a life insurance policy from the family members on the ground that the death was not attributable to the accident, but it was due to heart-attack. The Hon'ble Supreme Court in Paragraph Nos.30 and 35 has held as follows:

> *“30..........There is no material on record to indicate that the assured sustained specific injuries as a result of a fall from the motorcycle or that the injuries were caused by outward, violent and visible means, which was the sole and proximate cause of his death. There is no direct nexus or causation between the assured suffering a heart attack and injuries sustained in an accident by outward, violent and visible means. Nothing has been brought on record to show that the injuries sustained by falling from the motorcycle aggravated the assured’s condition that eventually led to his death. In the absence of any evidence to the contrary, the medical evidence on record is itself proof that the insured died due to a heart attack and not due to an accident of falling from the motorcycle. The heart attack had a distinct effect of the insured falling off from his motorcycle.”*

35.In the present case, there is no evidence to show that any bodily injuries were suffered due to the fall from the motorcycle or that they led to the assured suffering a heart attack. There is no evidence to show that the accident took place as a result of any outward, violent and visible means. The assured died as a result of a heart attack which was not attributable to the accident."

16. In view of the above said judgement of the Hon'ble Supreme Court, it is clear that unless the death or injuries is attributable to the accident or that the injuries had aggravated the condition of the deceased person, the insurance company cannot be held liable to pay compensation. In the present case, admittedly, the deceased had developed chest pain even before boarding the Auto and he was travelling in the said Auto from Thiruvallur to Chevvaipettai and thereafter, he had returned to Thiruvallur Government Hospital. As per the postmortem report, there were no external injuries in the body. Therefore, the conclusion arrived at by the Tribunal that had he arrived at the hospital in the golden hours, he could have been saved is not established by any oral or documentary evidence.

17.In view of the above said deliberations, this Court is constrained to hold that the death of the deceased person is not having any nexus whatsoever with the accident. Therefore, a motor vehicle insurance policy cannot be pressed into service to pay compensation for death of a person due to the Coronary Artery Disease. The Tribunal has erroneously passed an award as against the insurance company. Therefore, the award of the Tribunal in MCOP.No.196 of 2016 on the file of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate Court, Sivagangai is hereby set aside. This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.05.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Motor Accident Claims Tribunal
Cum Chief Judicial Magistrate,
Sivagangai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.297 of 2018
and C.M.P(MD).No.4136 of 2018

04.05.2023