



CMA.No.2049 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2049 of 2017
CMP.No.11030 of 2017

Royal Sundaram Alliance Insurance
Company Limited, Salem

Appellant

Vs

1. Kavitha
2. Tamilselvi
3. Seenivasan
4. Jaya
5. Appadurai

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 15.12.2016, made in MCOP.No.1805 of 2014, by the III Additional District Court (MACT) Salem.

For Appellant : Mr.M.B.Gopalan Associates

For Respondents : Mr.SP.Yuvaraj-RR1 to 4

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 15.12.2016, made in MCOP.No.1805 of 2014, by the III Additional District Court (MACT) Salem.
2. The Respondents 1 to 4, who are the wife, daughters and mother of the deceased Veerasamy, have filed the claim petition before the Tribunal, seeking a compensation of Rs.25,00,000/- on various heads, for the death of



CMA.No.2049 of 2017

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the deceased, who died in a motor road accident, which took place on 26.02.2014. The claim petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. The 5th Respondent, owner of the offending vehicle remained exparte. On the side of the claimants, PW.1 to PW.3 were examined and Ex.P1 to Ex.P5 were marked. On the side of the Insurance Company, RW.1 was examined and Ex.R1 and R2 were marked.

3. Finding that the deceased died due to the injuries sustained in the alleged motor road accident due to the rash and negligent driving of the driver of the offending vehicle, belonging to the 5th Respondent, the Tribunal has awarded a total compensation of Rs.9,56,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Future Income	756000.00
2	Funeral Expenses	25000.00
3	Loss of Consortium (Wife)	50000.00
4	Loss of Love and Affection (Daughters)	100000.00
5	Loss of Love and Affection (Mother)	20000.00
6	Transportation Expenses	5000.00
Total Compensation		956000.00

Aggrieved by the same, this appeal has been filed by the Appellant/ Insurance Company.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. According to the learned counsel for the Appellant, the deceased was also



CMA.No.2049 of 2017

WEB COPY

responsible for the accident due to his rash and negligent driving and hence, the Tribunal ought to have applied the theory of contributory negligence to both the claimant and the driver of the offending Lorry.

6. According to the learned counsel for the claimants/ Respondents 1 to 4, while the deceased was riding his motor cycle, following the traffic rules, the accident had occurred only due to the rash and negligent driving of the driver of the offending Lorry, coming in the opposite direction and hence, the impugned award is just and proper.
7. Though there is no quarrel over the compensation awarded by the Tribunal, on considering the submissions of the learned counsel on either side, this Court is of the view that the only issue to be considered is as to whether the principles of contributory negligence can be applied.
8. The Tribunal found that the accident had occurred due to the rash and negligent driving of the driver of the offending Lorry. But, according to the First Information Report, Ex.P1 and the final report, Ex.R1, negligence was on the part of the deceased, who had driven his motor cycle rashly and negligently and the accident had occurred only due to the negligence act of the deceased, while overtaking a lorry on the road curve and because of high speed, the deceased fell down and dragged against the Lorry. Hence, the Tribunal ought to have applied the theory of contributory negligence on both the deceased and the driver of the offending Vehicle. Therefore, this Court holds that both the driver of the offending Lorry and the deceased were



CMA.No.2049 of 2017

WEB COPY

responsible for the alleged accident to an extent of 75% and 25 % respectively and accordingly, finds it appropriate to apportion the negligence in the ratio of 75:25 as against the driver of the Lorry Van and the deceased respectively.

9. In view of the apportionment of negligence on the driver of the offending Lorry to an extent of 75%, the total compensation payable to the claimant by the Appellant would come to Rs.7,17,000/-.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.7,17,000 (Rupees seven lakhs seventeen thousand only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation. The claimants 1 to 4/ Respondents 1 to 4 are entitled to Rs.3,25,000/-, Rs.1,25,000/-, Rs.1,25,000/- and Rs.1,42,000, respectively. The claimants 1 and 4 are entitled to withdraw their respective shares with proportionate interest, by filing proper application. The share of the minor claimants shall be deposited in any one of the Nationalised Banks till they attain majority. The 1st claimant is entitled to withdraw interest from the deposit of the shares of the minor claimants once in six months directly from the Bank. The Appellant Insurance Company is at liberty to withdraw the balance amount, with proportionate interest. No costs.

12.04.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking



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CMA.No.2049 of 2017



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CMA.No.2049 of 2017

A.A.NAKKIRAN, J.

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To

1. III Additional District Court (MACT) Salem
2. The Record Keeper, VR Section, High Court, Madras

CMA.No.2049 of 2017

12.04.2023