



CMA.No.2830 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2830 of 2018

The Reliance General Insurance Company Limited
Salem

Appellant

Vs

1. Banu
2. Venkatachalam
3. United India Insurance Company Limited
4. Abdul Kadar

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 09.03.2018, made in MCOP.No.447 of 2011, by the Subordinate Judge (MACT) Sankagiri.

For Appellant : Mr.C.Hari for M/s.M.B.Gopalan Associates

For Respondents : No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 09.03.2018, made in MCOP.No.447 of 2011, by the Subordinate Judge (MACT) Sankagiri.
2. The 1st Respondent, who is the wife of the deceased, namely, Thiyaagu, has filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 02.04.2011, when he was travelling as a pillion rider in a motor cycle bearing Reg.No.TN 34 J 1152,



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belonged to the 2nd Respondent and insured with the 3rd Respondent Insurance Company, which dashed against the Tempo Minidor, bearing Reg.No.TN 28 K 9160, belonged to the 4th Respondent and insured with the Appellant Insurance Company. The claim petition was resisted, on various grounds, by both the Insurance Companies, by filing separate counters. The Respondents 2 and 4/owners of the offending vehicles remained exparte. On the side of the claimant, PW.1 to PW.3 were examined and Ex.P1 to Ex.P13 were marked. On the side of the Insurance Company, RW.1 and RW.2 were examined and RW.1 was marked.

3. Finding that the deceased died in the alleged motor road accident due to the rash and negligent driving of both the drivers of the offending vehicle, the Tribunal has apportioned the liability in the ratio of 50%:50% on the Appellant and 3rd Respondent, respectively and awarded a total compensation of Rs.16,02,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable in the ratio of 50%:50% by the Appellant Insurance Company and the 3rd Respondent Insurance Company, respectively, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Future Earning Capacity	1286000.00
2	Loss of Consortium	40000.00
3	Loss of Love and Affection	100000.00
4	Medical Expenses	36000.00
5	Pain and Suffering	100000.00
6	Transportation Expenses	10000.00
7	Loss of Estate	15000.00
8	Funeral Expenses	15000.00
Total Compensation		1602000.00



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Aggrieved by the quantum of compensation, this appeal has been filed by the Appellant Insurance Company.

4. This Court heard the learned counsel for the Appellant and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to narrate the entire facts in detail in respect of the accident.
6. According to the learned counsel for the Appellant, when it is a case of fatal and the claimant is the wife of the deceased and when compensation towards loss of consortium was awarded, the Tribunal ought not to have awarded a sum of Rs.1,00,000/- towards loss of love and affection and another compensation of Rs.1,00,000/- towards pain and suffering and hence, the said compensations need to be set aside.
7. It is a case of fatal. There is only one claimant, who is the wife of the deceased. In a case of fatal filed by the wife, no compensation towards pain and sufferings and loss of love and affection for the wife could be awarded. Hence, the compensation awarded under the said heads are set aside. The compensation awarded by the Tribunal under the other heads are confirmed. Thus, total compensation would come to Rs.14,02,000/-.
8. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants is entitled to a total compensation of Rs.14,02,000/- (Rupees fourteen lakhs two thousand only) with interest 7.5% p.a. from the date of



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the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Future Earning Capacity	1286000.00
2	Loss of Consortium	40000.00
3	Medical Expenses	36000.00
4	Transportation Expenses	10000.00
5	Loss of Estate	15000.00
6	Funeral Expenses	15000.00
Total Compensation		1402000.00

In so far as the apportionment of liability is concerned, both the Appellant Insurance Company and the 3rd Respondent Insurance Company are respectively directed to deposit 50% and 50% of the impugned compensation, with interest at 7.5% p.a. from the date of the petition till the date deposit, after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire award amount with interest, by filing appropriate application. No costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To
1. The Subordinate Judge (MACT) Sankagiri
2. The Record Keeper, VR Section, High Court, Madras

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