



C.M.A(MD)No.112 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 12.01.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.112 of 2022

and

C.M.P(MD)No. 1062 of 2022

M/s. National Insurance Company,
Through its Branch Manager,
Jerome Building, Kottai Station Road,
Trichy -2.

... Appellant

Vs.

1. Nagarathinam
2. Suthanraj
3. Anbarasu
4. Kumaresan
5. M/s. Nanban Driving School,
Through its Proprietor Mohammed Muhim,

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 15.09.2021 passed in M.C.O.P.No.518 of 2018 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirapalli.

For Appellant : Mr.V.Sakthivel

For R-1 to R-4 : Mr.Sudhagar Nagaraj

JUDGEMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the Award passed in M.C.O.P.No.518 of 2018, dated



C.M.A(MD)No.112 of 2022

15.09.2021 by the Learned Special District Judge [Motor Accident Claims Tribunal], Trichirapalli.

2. In the present appeal, the Insurance company has raised two grounds. The first ground is granting consortium to the brothers of the deceased. The next ground is that the Tribunal has failed to take contributory negligence.

3. The deceased is a Bachelor and the claim petition was filed by the Mother and Brothers of the deceased. The compensation under loss of consortium or loss of love and affection may be granted to the wife, parents and the children and not for brothers or sisters of the deceased who are not dependent on the deceased. Therefore, this Court is of the considered opinion that the Tribunal has erred in granting compensation under loss of consortium to the brothers. Hence Rs. 40,000/- under loss of consortium is granted to mother and the balance amount of Rs.1 Lakh consortium granted to the brothers is deducted.



C.M.A(MD)No.112 of 2022

4. As far as the contributory negligence is concerned, the Learned Counsel appearing for the Insurance Company submitted that the vehicle which was involved in the accident is a driving school vehicle and the driving school vehicle ordinarily would run in a slow speed. Therefore, there cannot be rash and negligent driving by the vehicle. Hence, the accident was occurred because of the negligence of the deceased. The contention of the Insurance Company was vehemently opposed by the Learned Counsel appearing for the claimant. The Learned Counsel appearing for the Insurance Company also relied on the First Information Report. In the First Information report, it has been stated that the deceased has suddenly crossed the road and the same is not disputed anywhere by the claimant. Therefore, this Court accepts the contention of the Insurance Company and inclined to fix contributory negligence on the deceased. Under contributory negligence this Court is inclined to deduct a sum of Rs.76,600/- from the total compensation.

5. Therefore, under loss of consortium Rs.1,00,000/- is deducted and Rs.76,000/- is deducted under contributory negligence. Hence the Claimants are entitled to Rs.12 Lakhs [Rs.13,76,600 – Rs.



C.M.A(MD)No.112 of 2022

1,76,600/-], as compensation. The 1st Claimant/Mother is entitled for a sum of Rs.9,00,000/- [Rupees Nine Lakhs Only] and the 2 to 4 Claimants/Brothers are entitled for a sum of Rs.1,00,000/-each [Rs. 1,00,000 x 3 = Rs.3,00,000/-]. The Insurance Company is directed to deposit a sum of Rs.12 Lakhs, within a period of Six Weeks from the date of receipt of a copy of the Order. The Claimants are permitted to withdraw the same as per law.

6. The next contention that was raised by the Insurance Company is that the Tribunal has passed an award restraining to deduct TDS. The issue of deducting TDS was referred to the Larger Bench and the same is pending. The Insurance Company shall deduct TDS. If the issue ended in favour of claimants, then the claimants shall seek refund by filing appropriate petition. No Costs. Consequently, connected miscellaneous petition is closed.

12.01.2024

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



C.M.A(MD)No.112 of 2022

WEB COPY

To

1. The Special District Judge
[Motor Accident Claims Tribunal],
Trichirapalli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.112 of 2022

S.SRIMATHY, J.

KSA

Order made in
C.M.A(MD)No.112 of 2022

12.01.2024