



C.M.A.(MD) No.1112 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

C.M.A.(MD) No.1112 of 2017

and

C.M.P.(MD) No.11279 of 2017

Sri Ram General Insurance Company Ltd.,
Jaipur [Industrial Area,
10003-E-8, R11 Co, Sitapura]
Rajasthan-303 032,
Through its Branch Manager.

... Appellant/
3rd Respondent

Vs.

- 1.P.Sunitha
- 2.Minor J.S.Harisekar
- 3.Minor J.S.Girisekar



C.M.A.(MD) No.1112 of 2017

4.V.Sarasammal

... Respondents 1 to 4/
Petitioners 1 to 4

5.D.Ani

6.R.Rajan

... Respondents 5 & 6/
Respondents 1 & 2

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.02.2016 made in M.C.O.P.No.51 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.

For Appellant : Mr.D.Sivaraman

For RR1 to 4 : Mr.R.T.Arivukumar

For RR5 & 6 : No appearance

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is preferred by the Insurance Company against an award for Rs.34,55,450/- in M.C.O.P.No.51 of 2013 on the file of the Motor Accident



C.M.A.(MD) No.1112 of 2017

Claims Tribunal (Chief Judicial Magistrate), Nagercoil, challenging both the mode of calculating the sum awarded as well as the negligence attributable to the victim of the accident.

2. The facts are as follow:

- On 29.04.2011, at about 10.00 am, while the victim was riding his motorcycle along with his wife in the pillion, a goods career bearing Registration No.TN 74 K 4470 came from behind, overtook the motorcycle, came in front of the motorcycle and suddenly applied the breaks, as a result of which the rider of the motorcycle crashed on to the goods career, suffered multiple injuries to his person and succumbed to the injuries later in the day. The pillion rider too suffered injuries.

- Seeking compensation, the widow and the children of the victim moved the Tribunal. At the relevant time, the victim was working as Conductor in the State Transport Corporation and was earning



C.M.A.(MD) No.1112 of 2017

WEB COPY

Rs.16,671/-. He was 44 years old at the relevant time and hence, the Tribunal has added another 30% to it towards future prospects of increase in income, it applied 15 as the multiplier and reduced the sum arrived by 25%, which sum is earmarked towards the personal expenditure of the victim, and determined the total loss of dependency at Rs.29,25,450/-. It then proceeded to grant Rs. 1,00,000/- to the wife of the victim towards loss of consortium. It also proceeded to grant Rs.1,00,000/- to each of the claimants for loss of love and affection and after adding other conventional heads, arrived at a total compensation of Rs.34,55,450/-. This award is now under challenge.

3. Heard both sides. Learned counsel for the appellant put forward two contentions: (a) The victim of the accident had partially contributed to the accident and the Tribunal ought to have apportioned part of the negligence to him; (b) Turning to the sum awarded, the Tribunal had applied 15 as the multiplier, when it ought to have applied 14 as the multiplier and that it

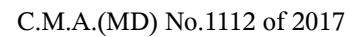


C.M.A.(MD) No.1112 of 2017

should not have awarded Rs.1,00,000/- towards loss of consortium or loss of love and affection, as the case may be.

4. Countering the same, the learned counsel for the claimants submitted that so far as the accident is concerned, FIR came to be registered at the instance of the pillion rider, who too was injured, and it was registered within about 2.30 hours from the time of the accident. In the FIR, it is stated that while the rider was riding the motorcycle, the offending vehicle came from behind and suddenly stopped in front of the motorcycle of the victim leading to a collision of the motorcycle with the offending vehicle. He submitted that it might be true that the victim might have hit the rear side of the offending vehicle, but then it ought to be understood in the context in which the accident had taken place.

5. The dynamics of no accident can be explained and every time the negligence of the victim as an aspect is raised as a defence by the Insurance Company, the Court merely tries to recreate the accident to the extent



6. Turning to the quantum of compensation as awarded by the Tribunal, this Court does find that the appellant has made out a case. The ideal multiplier to be applied is '14' and not '15' and the sum required to be awarded for loss of consortium or loss of love and affection, as the case may be, cannot exceed Rs.40,000/-. If so calculated, the total compensation that becomes



C.M.A.(MD) No.1112 of 2017

payable would be Rs.29,20,420/-. The breakup is as below:

Sl.No.	Description	Award amount (in Rs.)
1	Loss of dependency [(21670 x 14 x 12) less 25%]	Rs.27,30,420/-
2	Loss of Consortium	Rs. 40,000/-
3	Loss of love and affection to Claimants 2 to 4 (40,000 x 3)	Rs. 1,20,000/-
4	Funeral expenses	Rs. 15,000/-
5	Transportation Charges	Rs. 15,000/-
6	Total	Rs.29,20,420/-

7. This Court therefore, directs the appellant to deposit Rs.29,20,420/- (Twenty Nine Lakhs Twenty Thousand Four Hundred and Twenty Rupees only) with interest at the rate of 7.5% per annum.

8. Learned counsel for the appellant informs the Court that it has already deposited Rs.20,00,000/- with interest to the credit of the case before the Tribunal.



C.M.A.(MD) No.1112 of 2017

WEB COPY

9. To end, this Civil Miscellaneous Appeal is allowed in part reducing the compensation from Rs.Rs.34,55,450/- to Rs.29,20,420/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The appellant is now required to deposit the balance sum within a period of eight weeks from the date on which this judgment is hosted in the official website. The amount now determined as compensation would be apportioned in the same ratio in which the Tribunal has directed apportionment. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (P.V.M., J.)
04.07.2024

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

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C.M.A.(MD) No.1112 of 2017

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Nagercoil.



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C.M.A.(MD) No.1112 of 2017

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

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C.M.A.(MD) No.1112 of 2017

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