



WEB COPY



CMA No.2065 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2065 of 2023
and C.M.P. No.20108 of 2023

The Universal Sompo General Insurance
Company Ltd.,
Capital Towers, 5th Floor, 554 & 558,
Annasalai, Teynampet,
Chennai – 600 018.

..

Appellant

Vs.

1.Saranya
2.Arumugham
3.St.Josephs Matriculation School
Madhakoil, Periyapalayam,
Thiruvallur District,
Amoor, Ulundurpet (TK)
Villupuram, Tamilnadu – 607 209.

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29-06-2022 made in MCOP.No.91 of 2016 on the file of the Motor Accidents Claims Tribunal IV Additional District and Sessions Judge, Tiruvallur at Ponneri.



WEB COPY



CMA No.2065 of 2023

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.R.Venkatesulu

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the quantum of compensation granted by the Tribunal in the award dated 29-06-2022 made in MCOP.No.91 of 2016 on the file of the Motor Accidents Claims Tribunal IV Additional District and Sessions Judge, Tiruvallur at Ponneri.

2. By consent of the learned counsel appearing for the appellant as well as Mr.R.Venkatesulu, learned counsel, who undertakes to file vakalat for the respondents 1 & 2, this appeal is taken up for final disposal at the admission stage itself.

3. According to the respondents 1 & 2, on 18.08.2014, when the deceased Sabari was playing in front of his house at Bajanai Koil Street, Sulaimeni Village, the school bus belonging to the third respondent driven by its driver in a rash and negligent manner, dashed against the deceased and



CMA No.2065 of 2023

caused the accident. Hence, the respondents 1 & 2 filed claim petition against the third respondent as well as the appellant.

4. The third respondent remained exparte before the Tribunal.

5. The appellant/Insurance company filed counter and denied all the averments made by the appellants. It is stated that the accident occurred only due to the negligent act of the deceased Sabari who suddenly cross the road without minding the traffic; that the driver of the school bus did not possess valid driving licence at the time of accident and hence the appellant is not liable to pay compensation ; that in any event, the total compensation claimed by the respondents 1 & 2 are excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as PW1 and marked nine documents as Exs.P1 to P9. On the side of the appellant, neither witness was examined and nor document was marked.



CMA No.2065 of 2023

WEB COPY

7. The Tribunal, considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the school bus belonging to the third respondent and directed the appellant as well as third respondent to pay a sum of Rs.10,12,000/- as compensation to the respondents 1 & 2 .

8. Aggrieved by the said order, the appellant has preferred the present appeal .

9. The learned counsel appearing for the appellant submitted that the award of the Tribunal under the head loss of dependency is excessive; that the calculation of the Tribunal is erroneous in fixing the notional income for the minor child aged 4 years at Rs.6000/- per month and prayed for setting aside the award of the Tribunal.

10. The third respondent remained exparte before the Tribunal and hence notice to the third respondent is dispensed with.



CMA No.2065 of 2023

WEB COPY 11. Heard the learned counsel appearing for the appellant as well as respondent 1 & 2 and perused the materials available on record.

12. The only question involved in the present appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

13. From the award of the Tribunal, it is seen that the Tribunal had awarded a sum of Rs.8,91,000/- as compensation towards loss of dependency for the death of minor aged 4 years. The accident is of the year 2014. As per the II Schedule of the Motor Vehicles Act, for minor, a non-earning member, the income is fixed as Rs.15,000/- per annum. The Hon'ble Apex Court in the judgment reported in **2014 (1) SCC 244 (Kishan Gopal and another vs. Lala and others)**, held that fixing a sum of Rs.30,000/- per annum will be reasonable amount for the deceased minor. This Court has fixed notional income of the minor deceased as Rs.45,000/- to Rs.60,000/- per annum in some cases, considering the passage of time, after enactment of II Schedule of the Motor Vehicles Act. In the present case, the deceased was aged 4 years



CMA No.2065 of 2023

and was a school student at the time of accident. In view of the above, a sum

of Rs.45,000/- per annum is fixed as income of the deceased. As per II

Schedule of the Motor Vehicles Act, the multiplier applicable is '15'. Thus,

the compensation awarded by the Tribunal towards loss of income is modified

to Rs.6,75,000/- (Rs.45,000/- x 15). The amounts awarded by the Tribunal

under other heads is just and reasonable and hence the same are confirmed.

Thus, the compensation awarded by the Tribunal is modified as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	8,91,000/-	6,75,000/-	Reduced
2.	Loss of estate	16,500/-	16,500/-	Confirmed
3.	Loss of consortium	88,000/-	88,000/-	Confirmed
4.	Funeral expenses	16,500/-	16,500/-	Confirmed
	Total	10,12,000/-	7,96,000/-	Reduced by Rs.2,16,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,12,000/- is hereby reduced to Rs.7,96,000/- together with interest at 7.5% per annum (excluding



CMA No.2065 of 2023

the default period, if any) from the date of petition till the date of deposit.

The appellant / Insurance company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents 1 & 2 are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellant/insurance company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

01.09.2023

rgf

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



WEB COPY



CMA No.2065 of 2023

SUNDER MOHAN, J.

rgr

To

1.The IV Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Tiruvallur at Ponneri.

2. The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.2065 of 2023

01.09.2023