



C.M.A. (MD)No.288 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CMA(MD).No.288 of 2023 and
CMP(MD).No.3513 of 2023

The United India Insurance Company Ltd.,
Through its
Branch Manager,
No.81C, West Great Road,
Tuticorin.

...Appellant

Vs.

1.Subha
2.A.Thank Bai
3.Alben
4. minor. Advin Jino
(4th respondent impleaded as per order in
Í.A.No.13 of 2017, dated 11.10.2017)

5.Madasamy

6.United India Insurance Company Ltd.,
rep. by its Divisional Manager,
No.2/60/1, PPK Complex, 1st Floor,
Main Road,
Marthndam and Post,
Nalloor Village,
Vilavancode Taluk,
Kanyakumari District.

7.Maniamma

Respondents



C.M.A. (MD)No.288 of 2023

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Decree and Judgment, dated 25.03.2022 made in MCOP.No.22 of 2016, on the file of the Subordinate Judge, Kuzhithurai, Kanyakumari District.

For Appellant : Mr. A. Iango

For respondents 1 to 4 : Mr. Edwin Jayakumar

JUDGMENT

Challenging the quantum of compensation fixed by the Tribunal, the appellant / Insurance Company has filed the present appeal.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Tribunal.

3. The brief facts, leading to the filing of this appeal are as follows:

The first petitioner is the wife and the petitioners 2 and 3 are parents and the 4th respondent is the son of the deceased. The deceased was working as an Assistant Electrical Engineer in Rajkumar IMPEX (P)



C.M.A. (MD)No.288 of 2023

Ltd., at Tuticorin. On 12.10.2015 at about 6.00 PM, when the deceased was travelling as a rider in a Two Wheeler bearing Regn.No.TN 75 D 4385 TVS Appachi, the offending vehicle bearing Regn.No.TN 69 AK 1906 TATA ACE driven by the first respondent came in the wrong side in a rash and negligent manner and dashed against the Two wheeler as well as the deceased succumbed to injuries.

4. On the side of the claimants, PW.1 to PW.3 were examined and Exs.P1 to P33 were marked. On the side of the respondents, RW.1 was examined and Exs.R1 to R4 were marked.

5. The Tribunal finding that the offending vehicle was rash and negligent, which resulted in accident, has held that only the offending vehicle driver was negligent.

6. Taking note of the salary certificate issued by the employer, the Tribunal has fixed the salary of the deceased at Rs.18,500/- per month. It is the submission of the appellant counsel that the Tribunal calculating all the medical allowances and other allowances fixed the compensation and this in fact, against the dictum of the Hon'ble Apex Court reported in



C.M.A. (MD)No.288 of 2023

the case of **AIR 2017 SC 5157 (National Insurance Company Ltd., Vs. Pranay Sethi and Ors).**

WEB COPY

7. Mr.Edwin Rajkumar, learned counsel appearing for the respondents 1 to 4 would submit that the Tribunal has rightly considered all the allowances as received by the deceased at the relevant point of time and awarded a just compensation and prayed for dismissal of this appeal.

8. This Court has perused the materials and considered the submissions made by the learned counsel appearing on either side.

9. The Tribunal has considered all the allowances and included the gross salary, which is according to law laid down by the Hon'ble Supreme Court is not correct. Accordingly, the salary calculated by the trial Court is not proper and if all the allowances are calculated, total salary drawn by the deceased should be fixed at Rs.9,000/-. Considering the age of the deceased 50% is to be added towards future prospects. After adding 50%, the monthly income is calculated as Rs.13,500/-. Considering the age of the deceased, multiplier '16' is applied and the claimants are entitled to Rs.25,92,000/- towards loss of income.



C.M.A. (MD)No.288 of 2023

(Rs.13,500/- x 12 x 16). The Tribunal has awarded a sum of Rs.1,76,000/- towards loss of consortium, which is excessive and hence, the same is hereby reduced to Rs.1,60,000/- by awarding a sum of Rs.40,000/- to each of the claimants towards the loss of love and affection. Further the amount awarded by the Tribunal towards loss of Estate, funeral expenses and Transport Expenses are also modified to the extent that the claimants are entitled to a sum of Rs.15,000/- in each of the head. Therefore, the award of the Tribunal is reduced to a sum of Rs.27,97,900/- from Rs.42,63,904/- in the following manner:-

S.No.	Heads	Amount
1	Loss of Income	25,92,000
2	Loss of Love and affection	1,60,000
3.	Loss of Estate	15,000
4.	Funeral Expenses	15,000
5.	Transport Expenses	15,000
	Total	27,97,000

10. The interest awarded by the Tribunal at the rate of 7.5% per annum remains un-altered.



C.M.A. (MD)No.288 of 2023

11. The learned counsel appearing for the appellant submits that the amount awarded by the Tribunal has already been deposited before the Tribunal. Hence, the respondents 1 to 4 / claimants are entitled to their shares as per the apportionment fixed by the Tribunal along with accrued interest and costs and the respondents 1 to 3 are permitted to withdraw their shares on filing necessary application before the Tribunal. Since the fourth respondent is a minor, the share of the 4th respondent shall be deposited in any one of the Nationalised Banks till he attains majority. The balance amount shall be refunded to the appellant / Insurance Company on filing necessary application before the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.03.2023

Index : Yes/No
Internet : Yes/No
trp



WEB COPY



C.M.A. (MD)No.288 of 2023

To

The Subordinate Judge, Kuzhithurai, Kanyakumari District.



WEB COPY



C.M.A. (MD)No.288 of 2023

N.SATHISH KUMAR, J.

trp

CMA(MD).No.288 of 2023 and
CMP(MD).No.3513 of 2023

24.03.2023