



C.M.A.(MD).No.53 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.53 of 2023

and

C.M.P.(MD).No.638 of 2023

The Branch Manager,
United India Insurance Company Limited,
Kanyakumari,
(Insurer of the vehicle
bearing Registration No.TN-74-AF-9569)

... Appellant

Vs.

1.Rajan
2.Vasanthakumari
3.Sujith
4.Mohan
5.Arulmani @ John Joseph Arulmani
6.Paulraj

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, challenging the award dated 01.09.2022 made in M.C.O.P.No.24 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai.

For Appellant	: Mr.I.Suthakaran
For R1 to R4	: Mr.S.Sivakumar
For R5	: Mr.G.Anto Prince
For R6	: No appearance



C.M.A.(MD).No.53 of 2023

WEB COPY

J U D G M E N T

Challenging the quantum fixed by the Tribunal, the present appeal came to be filed by the Insurance Company.

2. On 13.04.2016, at about 11.00 p.m., while the deceased was travelling along with his friends in a car bearing Registration No.TN 07 AB 2148 from Kuzhithurai to Nagercoil, near Sungankadai, the first respondent driven a car bearing Registration No.TN 74 AF 9569 in a rash and negligent manner with high speed and dashed against the vehicle. As a result, the deceased succumbed to injuries and the F.I.R. also registered against the driver of the offending vehicle. The deceased was aged about 28 years at the relevant point of time. Hence, the petitioners have filed the claim petition before the Tribunal seeking compensation. The first petitioner is the father, the second petitioner is the mother and the petitioners 3 and 4 are the brothers of the deceased. Before the Tribunal, the second and the fourth respondents took a stand that the accident was not occurred due to the negligence on the part of the driver of the offending vehicle.



WEB COPY

3. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P25 were marked and no oral and documentary evidence marked on the side of the respondents.

4. The Tribunal, after considering the evidence of P.Ws.1 and 2 and the F.I.R. filed against the offending vehicle, has come to the conclusion that only the driver of the offending vehicle driven the vehicle in a rash and negligent manner, which resulted in the accident. However, while awarding compensation, the Tribunal has fixed a sum of Rs.25,000/- as notional income and awarded a sum of Rs.27,59,000/- in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of dependency	Rs.25,50,000/-
2.	Loss of consortium	Rs.1,76,000/-
3.	Loss of estate	Rs.16,500/-
4.	Funeral expenses	Rs.16,500/-
	Total	Rs.27,59,000/-

Challenging the quantum of compensation, the present appeal has been filed by the Insurance Company.



C.M.A.(MD).No.53 of 2023

WEB COPY

5. It is the contention of the learned counsel for the appellant that the Tribunal without any evidence has fixed the notional income at Rs.25,000/-. In the absence of any evidence, the notional income ought not to have been fixed at Rs.25,000/-. Whereas, the learned counsel appearing for the respondents 1 to 5 would submit that the deceased was an engineering graduate and had a valid passport and he worked in several other companies. Therefore, fixing Rs. 25,000/- as notional income by the Tribunal cannot be faulted with. Further, it is the contention that the Tribunal has not added the future prospects.

6. In the light of the submissions, now the point arise for consideration in this appeal is whether the Tribunal is right in fixing the notional income at Rs. 25,000/- without any evidence on record. As the negligence and the accident not disputed, now the quantum alone raised in this appeal and the Tribunal has fixed the notional income at Rs.25,000/- per month. Though the deceased was worked as a technician, salary certificate has not been produced. Ex.P23 is the course completion certificate of the deceased. Though the deceased has completed the course of Electrical and Electronics Engineering during the academic year 2005 – 2008, no other document whatsoever was filed for fixing the salary of the deceased. Therefore, merely on the basis of the graduation, the



C.M.A.(MD).No.53 of 2023

notional income has been fixed. If really the deceased had some job and he had worked somewhere else, at least the Bank statement and salary certificate would have been filed by the petitioners, which has not been done so. Therefore, this Court is of the view that fixing the notional income at Rs. 25,000/- is in excess. Accordingly, this Court reduced the same as Rs.15,000/- per month and added 40% towards future prospects and the total monthly income comes around Rs.21,000/-. Since the deceased is a bachelor, 50% is deducted towards personal expenses. Thus, the total loss of dependency comes to Rs.21,42,000/- ($\text{Rs.10,500/-} \times 12 \times 17$) and the amount awarded by the Tribunal under the heads of loss of consortium at Rs.1,76,000, loss of estate at Rs.16,500/- and funeral expenses at Rs.16,500/- is confirmed. The total compensation payable to the claimants is Rs.23,51,000/-.

7. The apportionment made by the Tribunal is also not proper. Out of Rs. 23,51,000/-, the second respondent/mother is entitled to a sum of Rs.9,00,000/-, the first respondent/father is entitled to a sum of Rs.6,00,000/- and the respondents 3 and 4 are equally entitled to the remaining amount.



C.M.A.(MD).No.53 of 2023

WEB COPY

8. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw their share with interest at the rate of 7.5% per annum. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.04.2023

akv

To

The Motor Accident Claims Tribunal,
Sub Court,
Kuzhithurai.



WEB COPY



C.M.A.(MD).No.53 of 2023

N.SATHISH KUMAR,J.

akv

C.M.A.(MD).No.53 of 2023

21.04.2023