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C.M.A.No.2532 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2532 of 2024

1. The Commissioners of Police
Commissioner of Office
Vepery, Chennai.
2. The Commandant
TSP - III BN, Veerapuram
Chennai-55.

... Appellants

Vs.

Kavitha
W/o.Victor

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.08.2023 passed by the Motor Accident Claims Tribunal No.2, Court of Small Causes, Chennai made in M.C.O.P.No.4442 of 2016.

For Appellants	:	Mr.D.Gopal Government Advocate
For Respondent	:	Mrs.A.Subadra

J U D G M E N T



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Aggrieved by the compensation awarded by the Tribunal on 05.08.2023 in M.C.O.P.No.4442 of 2016 filed by the petitioner/claimant, the respondents-police has come before this Court challenging the same by filing the present civil miscellaneous appeal.

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

3. The brief facts of the case are as follows:

On 05.06.2016 at about 14.00 hours while the deceased standing at Ottery, Pananthope Colony, 10th Street, Near Railway Bala Bavan Matriculation Higher Secondary School, Ayanavaram, at that time, the police van bearing Registration No.TN 20 G 1048 was driven by its driver in a rash and negligent manner and dashed the deceased thereby the deceased sustained fatal injuries and died on the way to hospital. The accident was happened only due to the rash and negligent driving of the police van.



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4. To substantiate the case on the side of the petitioner/claimant, the petitioner/claimant examined herself as P.W.1 and one Parthiban, who is the eye witness to the accident was examined as P.W.2 and marked documents Ex.P1 to Ex.P7. On the side of the respondents, one Elumalai, who is police van driver was examined as R.W.1 and no documents were marked.

5. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.9,37,800/- with future interest at 7.5% per annum from the date of claim petition till the date of payment payable by the second respondent with costs. The Tribunal directed the respondents police to deposit the entire award amount within two months time to the Tribunal's Bank Account. The Tribunal further directed the respondents police to deposit the total award amount for the period of three years.

6. Challenging the above Award of compensation, the respondents Police have filed the present Civil Miscellaneous Appeal.



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7. The learned counsel for respondents Police submitted that the driver of the police vehicle bearing Registration No.TN 20 G 1048 is under the control of the first respondent, who drove the vehicle by following traffic rules and second respondent is not responsible to the claim and that the driver was suspended and departmental action was also initiated against him and his increment was postponed for one year with cumulative effect. However, the police taken a defence before the Tribunal that the police van driver Elumulai, who was examined as R.W.1 deposed that another boy came in a bike and hit the police van and caused the accident. They relied on evidence of RW1 and Ex.P6 newspaper which would show that the deceased and another boy came in a bike and hit against the police van and caused the accident. Even though the boy is a minor boy, the Tribunal fixed the income of the deceased as Rs.4,500/- per month and arrived the annul income of the deceased as Rs.54,000/- which is highly excessive. The Tribunal had deducted only 10% towards contributory negligence while the fact remains that the deceased was only responsible for the accident. The Tribunal, without appreciating vital facts, came to the conclusion that the second respondent police van driver is responsible for the accident and



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awarded excessive compensation of Rs.9,37,800/- and hence, the learned counsel prays to reduce the compensation.

8. The learned counsel for petitioner/respondent submitted that admittedly, a complaint was lodged by one Rajini to Kilpauk Traffic Investigation Wing, based on which, an FIR was registered in Crime No.106 of 2016 under Sections 279, 304(A) and 338 of IPC as against the second respondent police van driver stating that the deceased while standing at Ottery, Pananthope Colony, near Railway Bala Bavan Matriculation Higher Secondary School, Ayanavaram, the police van was driven in a rash and negligent manner and dashed the deceased, who has sustained fatal injuries and died on the way to hospital. The Tribunal has rightly arrived at the conclusion that due to the negligence of police van driver, the accident was happened and awarded the total compensation, after deducting the contributory negligence of the deceased at the rate of 10%, of Rs.9,37,800/- which is very meagre and learned counsel prays for dismissal of the appeal.

9. It is seen that on 05.06.2016 at about 14.00 hours while the



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deceased was standing at Ottery, Pananthope Colony, 10th Street, Near Railway Bala Bavan Matriculation Higher Secondary School, Ayanavaram, at that time, the police van bearing Registration No.TN 20 G 1048 was driven by its driver in a rash and negligent manner and dashed the deceased thereby the deceased sustained fatal injuries and died on the way to hospital. Admittedly, the accident was happened due to the negligence of RW1 and contributory negligence of the minor, who had ridden the bike and the Tribunal has rightly fixed the contributory negligence of the deceased as 10%. In view of the judgment of Hon'ble High Court in ***Mallika Bee*** case ***[M/s.Reliance General Insurance Company Ltd., Vs. Mallika Bee and two others]*** the Tribunal has fixed the notional income of the deceased as Rs.4,500/-per month, which is not excessive one. In view of the judgment of Hon'ble Supreme Court in ***Sarla Verma*** case ***[Sarla Verma and others vs. Delhi Transport Corporation and others]*** reported in ***2009 (2) TNMAC 1]*** and in view of ***Mallika Bee*** case, the Tribunal has not deduced the personal expenses of the deceased since he was a minor and arrived at the total loss of dependency of Rs.9,72,000/-. The tribunal has awarded a sum of Rs.40,000/- under the head of Loss of Consortium, a sum of Rs.15,000/-



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towards Loss of Estate, a sum of Rs.15,000/- towards Funeral Expenses and after deducting 10% towards contributory negligence, arrived at Rs.9,37,000/-, which is just and reasonable one. Hence, this Court does not find any ground to interfere with the award passed by the Tribunal.

10. The respondents/Police is directed to deposit the compensation awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

06.12.2024



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Index : Yes / No

Speaking Order / Non-speaking order

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To

1. The Special Sub Judge No.II
Court of Small Causes,
The Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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