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Civil Miscellaneous Appeal No.3037 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.3037 of 2023

1. E.Kamakotti

2. E.Madhankumar

3. E.Suriya Prakash

... Appellants

Vs.

The Commandant Tamil nadu Special Police,
Xth Battalion, Ulundurpet Taluk,
Villupuram District – 606 201

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.3287 of 2020 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small causes Court, Chennai dated 10.06.2022.

For Appellant : M/s.KR.Santhakumari

For Respondents : Mr.A.Anandan,
Government Advocate



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JUDGMENT

The claimants, who are the wife and two sons of the deceased Elumalai, not being satisfied with the quantum of compensation fixed by the Tribunal, has filed this Appeal challenging the award passed by the Motor Accident Claims Tribunal, Chief Judge, Small causes Court, Chennai dated 10.06.2022 in M.A.C.T.O.P.No.3287 of 2020.

2. The case of the claimants is that the deceased Elumalai was riding a bicycle on 31.08.2020 at CTH Road near Sathyamoorthy Nagar and at about 6.30 p.m, the offending vehicle, which is a Eicher police van came from behind in a rash and negligent manner and it rammed on the bicycle. As a result, the deceased was thrown out of the bicycle and he sustained grievous injuries and he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a



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conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the offending vehicle.

Having rendered such a finding, the Tribunal determined the total compensation at Rs.2,75,000/- under various heads as follows :-

<i>Sl.N o.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Towards loss of Income/ Dependency Rs.5,000 x 12 x 5 x 2/3	Rs.2,00,000/-
2.	Towards loss of Consortium Rs.20,000/- each x 3 (wife and sons)	Rs.60,000/-
3.	Towards funeral expenses	Rs.15,000/-
	Total	Rs.2,75,000/-

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.



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5. Heard Mrs.K.R.Santhakumari, learned counsel for appellants/claimants and Mr.A.Anandan, learned Government Advocate for respondent.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The main ground that was urged by the learned counsel for appellants was that the Tribunal went wrong in fixing the monthly income of the deceased at Rs.5,000/-, which is on the lower side.

9. In the instant case, the deceased was a pensioner. Before the Tribunal, Ex.P8 was marked and it contained only the 1st page of the Pension Pass book. The details of the pension received by the deceased was not available before the Tribunal. Therefore, the Tribunal fixed the



notional monthly income at Rs.10,000/- and deducted 50% on the ground that the claimants will receive only family pension of Rs.5,000/-.

10. During the pendency of this appeal, CMP No.10371 of 2024 has been filed under Order XLI Rule 27 for permitting the appellants to file additional documents. The additional documents that were brought before this Court are the Pension Payment order and also the bank pass book. These documents will have lot of relevance in fixing the monthly income of the deceased and hence, this petition is allowed.

11. If the above documents were available before the Tribunal, the Tribunal would have had the opportunity to fix the notional monthly income of the deceased appropriately. Since it was not available, the Tribunal was forced to fix the notional monthly income as Rs.5,000/-. In the light of availability of documents of sterling quality, this Court is inclined to rely upon these documents.

12. The documents that have been brought in by way of additional documents are marked as Ex.P17 – Pension Payment Order



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and Ex.P18 – Bank pass book, respectively.

13. It is seen that as on 03.04.2020, which is before the accident which took place on 31.08.2020, the deceased was drawing a pension of Rs.16,977/-. This amount can be taken to be the income of the deceased. Hence, even after the demise of the deceased, the wife will be entitled for 50% of the amount as family pension. Therefore, only the balance amount should be taken towards loss of income. This Court is inclined to fix the monthly loss of income at Rs.8,500/-. The compensation under the head of loss of income / dependency is calculated as follows :-

$$\text{Loss of Income /Dependency} = 8500 \times 12 \times 5 \times 2/3$$

$$= 3,40,000/-$$

14. The Tribunal has granted only a sum of Rs.60,000/- under the head of loss of Consortium, this Court is inclined to enhance the same to Rs.1,20,000/- (Rs.40,000 each) under the head of “loss of consortium” to wife and “loss of love and affection” to two sons.

15. The Tribunal has not granted any compensation under the



head of loss of estate and this Court is inclined to fix a sum of Rs.15,000/- under that head.

16. In the light of the above discussion, the compensation fixed by the Tribunal is modified in the following terms :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Towards loss of Income/ Dependency Rs.8,500 x 12 x 5 x 2/3	Rs.3,40,000/-
2.	Towards loss of Consortium Rs.40,000/- each x 3 (wife and sons)	Rs.1,20,000/-
3.	Towards Loss of estate	Rs.15,000/-
3.	Towards funeral expenses	Rs.15,000/-
	Total	Rs.4,90,000/-

17. The compensation awarded by the Tribunal at Rs.2,75,000/- is enhanced to Rs.4,90,000/-. The respondent is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit



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within a period of four weeks from the date of receipt of this judgment.

Insofar as the enhanced compensation of Rs.2,15,000/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 285 days as was ordered by this Court in C.M.P.No.21186 of 2023, dated 09.11.2023. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

18. In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

26.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J
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To,
Motor Accident Claims Tribunal, Chief Judge, Small causes Court,
Chennai

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26.06.2024