



CMA No.643 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE **MR. JUSTICE N. ANAND VENKATESH**

CMA No.643 of 2023

1.A.Kowsalya

2.A.Sheefa Josephine

3.A.Bennet William

4.A.Vinoth Naveen Raj

.. Appellants

.Vs.

1.The Commissioner

Corporation of Chennai North

Chennai Main Depot

M.E.Dept No.16, Basin Bridge Road

Chennai 600 003.

2.The Manager

The New India Ass.Co.Ltd.,

Third Party Claim Office

232, Bombay Mutual Building

VI Floor, NSC Bose Road

Opposite High Court Building

Chennai 600 001.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2022 made in MCOP No.5544 of 2018, on the file of Motor Accident Claims Tribunal (II Special Judge, Small



CMA No.643 of 2023

Causes Court, Chennai).

For Appellants : Mrs.P.T.Saleem Fathima

For Respondents : Mrs.P.T.Ramadevi [R1]

Mr.S.Arunkumar [R2]

JUDGMENT

The claimants who are the wife, two sons and one daughter not being satisfied with the quantum of compensation fixed by the Tribunal in MCOP No.5544 of 2018 dated 06.01.2022, have filed the present appeal seeking for enhancement of compensation.

2.The case of the claimants is that the deceased Alphonse was riding a two wheeler on 02.05.2018 at Perambur Batten paul Road and at about 9.20 hours., when the vehicle came near the Bharat Scouts and guide Centre, the offending vehicle which was a Lorry was driven in a rash and negligent manner and it hit the two wheeler from behind as a result of which, the deceased was thrown out of the vehicle and he sustained grievous injuries and died on the spot. 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 conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

4.The Tribunal having rendered the above finding proceeded to fix the total compensation at Rs.4,64,725/- (rounded off to Rs.4,65,000/-) under various heads as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Total loss of dependency	2,74,725/-
2.	Loss of Consortium	1,60,000/-
3.	Loss of Estate	15,000/-
4.	Funeral Expenses	15,000/-
	Total compensation is fixed at	4,64,725/-
	Rounded off to	Rs.4,65,000/-

5.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

6.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal have filed the present appeal before this Court.

7.Heard Mrs.P.T.Saleem Fathima, learned counsel for the appellants and Mrs.P.T.Ramadevi, learned counsel for R1 and Mr.S.Arun Kumar, learned counsel



CMA No.643 of 2023

for R2 – Insurance Company.

WEB COPY

8.This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

9.The main ground that was raised by the learned counsel for the appellants is that the Tribunal went wrong in fixing only a sum of Rs.6,105/- as the monthly earnings of the deceased which the claimants will be deprived of on the demise of the deceased. The learned counsel submitted that the Tribunal ought not to have deducted the family pension amount and the Tribunal ought to have fixed the sum of Rs.25,029/- as the income by relying upon Ex.P.8 and the loss of income ought to have been calculated with this monthly income.

10.In order to appreciate the submission made by the learned counsel for the appellants, this Court has to necessarily look at the materials available before the Court. Ex.P.8 is the pension payment order copy. As per this document, the total pension of the deceased who is a retired Sub Inspector of Police was Rs.25,029/-. PW.1 in her deposition has stated that after the demise of her husband, she was getting a sum of Rs.6105/- towards family pension.



CMA No.643 of 2023

WEB COPY

11. On consent given by either side, the bank passbook of the deceased Alphonse, and the 1st claimant - Kowsalya (wife of Alphonse) was taken on record. On going through the same, it is seen that on the demise of Alphonse, the wife who is the 1st claimant is receiving a sum of Rs.17,408/- towards family pension. Therefore, in terms of loss of income, it can be arrived at as follows:

Pension that was received by the deceased	:	25,029/-
(-) Family pension that is received by the wife/1 st claimant	:	17,408/-

the difference of income that is a loss for the 1 st claimant	:	7,621/-

12. The submission of the learned counsel for the appellants that the family pension should not be deducted and the entire amount must be taken, may not be sustainable in the facts of the present case. If there was any independent income, only in those cases, the family pension cannot be deducted from that independent income. In the case in hand, the only income of the deceased was through pension. On his demise, the 1st claimant is getting family pension. Therefore, difference between the pension received by the deceased and the family pension received by the 1st claimant alone can be taken to be the loss of income for the claimants.



CMA No.643 of 2023

WEB COPY

13. In the light of the above discussion, this Court is inclined to fix a sum of Rs.7,621/- towards loss of monthly income and the compensation under the head 'loss of income/dependency' is calculated as follows:

Monthly income fixed	:	Rs.7,621/-
Multiplier to be adopted	:	5
Loss of income/dependency:		Rs.7,621/- * 12 * 5
	:	Rs.4,57,260/-
(-)/4 for personal expenses:		Rs.1,14,215/-

		Rs.3,42,845/-

14. The compensation that has been fixed under the other heads are reasonable and it does not require the interference of this Court.

15. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Total loss of dependency	3,42,945/-
2.	Loss of Consortium	1,60,000/-
3.	Loss of Estate	15,000/-
4.	Funeral Expenses	15,000/-
	Total compensation is fixed at	5,32,945/-
	Rounded off to	Rs.5,32,950/-



CMA No.643 of 2023

Sl.No	Compensation awarded under the head	Amount (in Rs.)

16.The compensation awarded by the Tribunal at Rs.4,65,000/- is enhanced to Rs.5,32,950/-. The 2nd respondent Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest @ 7.5% p.a., from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit, the appellants/claimants will be entitled to withdraw the entire compensation with interest. Insofar as the enhanced compensation of Rs.67,950/- is concerned, the appellants/ claimants will not be entitled for interest for the period of delay period of 105 days as was ordered by this Court in C.M.P.No.21904 of 2022, dated 27.02.2023. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants/claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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



CMA No.643 of 2023

WEB COPY

30.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

N. ANAND VENKATESH., J

KP

To

- 1.The II Special Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.
- 2.The Commissioner
Corporation of Chennai North
Chennai Main Deport
M.E.Dept No.16, Basin Bridge Road
Chennai 600 003.
- 3.The Manager
The New India Ass.Co.Ltd.,
Third Party Claim Office
232, Bombay Mutual Building
VI Floor, NSC Bose Road
Opposite High Court Building
Chennai 600 001.

CMA No.643 of 2023



WEB COPY



CMA No.643 of 2023

30.07.2024