



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2016
CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

C.M.A (MD) No.1360 of 2015
and M.P (MD) No.2 of 2015

The Manager,
The Oriental Insurance Company Limited,
City Branch Office No.10, 46, West Matha Church Street,
Appavu Towers, Rayapuram,
Chennai - 13.

... Appellant/2nd Respondent

-Vs-

1.Kala
2.Minor Giritharan
3.Minor Nalan
4.Lakshmi
5.Nagamuthu .. Respondents 1 to 5/Petitioners 1 to 5

6.C.Amirthalingam .. 6th Respondent/1st Respondent
(RR 2 & 3 are rep. By their mother/
natural guardian, first respondent)
(R - 6 remained ex-parte before the
lower Court)

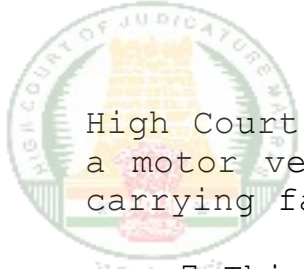
Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.06.2014 made in M.C.O.P.No.154 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirappalli.

For Appellant : Mr.K.Bhaskaran
For RR 1 to 5 : Mr.N.Sudhagar Nagaraj
For R6 : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 10.06.2014 made in M.C.O.P.No.154 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirappalli.

2.The accident took place on 08.02.2012 at about 08.00 p.m., in Trichy - Thanjavur National Highways, Sanarpatti. The death took place instantly on the spot and the heirs of the deceased filed the claim petition before the Motor Accidents Claims Tribunal cum Special District Judge, Tiruchirappalli in



High Court relied upon clause (iv) which provides that a driver of a motor vehicle shall not park his vehicle in a main road or one carrying fast traffic.

7. This apart, Rule 107 of the Motor Vehicle Rules, 1988, deals with Top lights and Rule 109 deals with parking light, which reads as follows:-

"Rule 107. Top lights. - Every goods vehicle including trailer and semi-trailer other than three-wheelers and vehicles with overall width not exceeding 2.1 metres shall be fitted with two white lights at the top right and left corners showing light to the front and two red lights at the top right and left corners at the rear. The lights shall remain lit when the vehicle is kept stationary on the road during night and at the time of poor visibility:

Provided that in the case of goods carriage without a full body in the rear, provision, for fitting of the top light at the rear shall not be necessary".

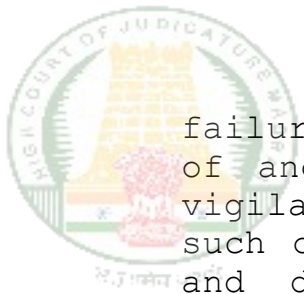
"Rule 109. Parking light. Every motor vehicle other than three wheelers of engine capacity not exceeding 500 cc, motor cycles and three wheeled invalid carriage shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road: Provided that these rear lamps can be the same as the rear lamps referred to in rule 105, sub-rule (2):

Provided further that in the case of agricultural tractors, parking lights shall be mounted on the rear mudguards so that the lights are visible from the front and also from the rear."

8. The term "negligence" has been discussed by the Apex Court in *Municipal Corporation of Greater Bombay vs. - Laxman Iyer & another* 2004(1) TN MAC(SC) 16 = 2004 1 MLJ 82. Para 6 of the judgment which is relevant reads as follows:

"A plea which was stressed strenuously related to alleged contributory negligence. There is no statutory definition, in common parlance 'negligence' is categorized as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would

Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is



failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be said just and down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligence act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn. Para 328). It is now well-settled that in the case of contributory negligence, Courts have power to apportion between the parties as seems equitable. Apportionment in that context means that damage are reduced to such an extent as the Court thinks just and



equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence."

9. Accordingly, this Civil Miscellaneous Appeal is devoid of merits and the award passed by the Motor Accidents Claims Tribunal cum Special District Judge, Tiruchirappalli in M.C.O.P.No.154 of 2013, is confirmed and the Civil Miscellaneous Appeal is dismissed.

10. The learned counsel for the appellant/Insurance Company represented that the entire award amount had been deposited and the respondents 1, 4 and 5/claimants 1, 4 and 5 are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, with proportionate accrued interest and costs by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share of the minors-second and third respondents in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest of the minor once in three months directly from the bank, only for the welfare of minors. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal cum
Special District Judge,
Tiruchirappalli.

2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.K.BHASKARAN, ADVOCATE IN SR No. 66927

PS

TE/PM : 28/12/2016 : 5P/4C

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