

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.439 and 2254 of 2018
and

C.M.P.No.3828 of 2018

C.M.A.Nos.439 of 2018

M/s.Reliance General Insurance Company Limited,
The Branch Office,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem. ..Appellant/3rd Respondent

Vs.

1.Amudha,
W/o.Late.Subramaniam,
2.Sundar (Minor),
S/o.Late.Subramaniam,
3.Saveen Anand (Minor),
S/o.Late.Subramaniam ...Respondents 1 to 3/Petitioners
(Respondents 2 & 3 minors Respondent
by mother & next friend 1st respondent)

4.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
D.No.12, Ramakrishna Road,
Salem 636 007.

5.S.Madeswaran,
S/o.Srinivasan ... Respondents 4 & 5/
Respondents 1 & 2

PRAYER : Appeal filed against the Judgment and Decree passed in
M.C.O.P.No.164 of 2015, dated 17.08.2017, on the file of the
Motor Accident Claims Tribunal, Principal District Court,
Namakkal.

For Appellant : Mr.R.Mohanbabu,
for M/s.M.B.Gopalan Associates
For Respondents : Mr.Ma.P.Thangavel (for R1 to R3)
Mr.D.Venkatachalam (for R4)

C.M.A.Nos.2254 of 2018

1.Amudha,
W/o.Late.Subramaniam,
2.Minor Sundar,
S/o.Late.Subramaniam,
3.Minor Saveen Anand,
S/o.Late.Subramaniam ... Appellants/Petitioners
(Minor Petitioners rep. by their next friend,
Guardian/Mother Amudha)

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
D.No.12, Ramakrishna Road,
Salem 636 007.

2.S.Madeswaran,
Son of Srinivasan

3.Reliance General Insurance Company Limited,
Branch Office, Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem. ... Respondents/Respondents

(The Respondent - 2 set ex parte before
the Tribunal, Hence notice may be dispensed
with in this Appeal)

PRAYER : Appeal filed against the Judgment and Decree dated
17.08.2017 made in M.C.O.P.No.164 of 2015, on the file of
MACT/Principal District Court at Namakkal.

For Appellant : Mr.Ma.P.Thangavel
For Respondents : Mr.D.Venkatachalam (for R1)
Mr.R.Mohanbabu (for R3)
for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeals have been preferred by both the Insurance Company as well as by the claimants. The Insurance company is questioning the negligence aspect in C.M.A. No.439 of 2018 and the claimants are questioning the quantum in C.M.A. No. 254 of 2018.

2.The appeals arise out of death of one Mr.Subramaniam, aged about 49 years, Government School Teacher, earning about Rs.37,860/- per month, who met with an accident while travelling in a bus belonging to the Transport Corporation from South to North direction on Namakkal to Salem Main road which dashed behind a lorry belonging to one Mr.S.Madeswaran and insured with the Insurance Company which was parked without any signal. In the accident, the said Mr.Subramaniam died, which has compelled his legal heirs to file a claim petition.

3.On contest, the Tribunal found that the driver of the lorry as well as bus are equally responsible for the accident and fixed liability at the ratio of 50:50 and awarded a sum of Rs.48,95,565/- to be paid equally by the transport Corporation as well as by the Insurance company of the Lorry. The said award is challenged before this Court by these appeals.

4.Heard Mr.R.Mohanbabu, learned counsel appearing on behalf of the Insurance Company, Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the claimants and Mr.D.Venkatachalam, learned counsel appearing on behalf of the transport corporation.

5.The Tribunal based on PW2/eyewitness's evidence rightly determined the negligence on the part of the driver of the lorry as well as transport Corporation's bus. PW2 categorically stated that the lorry was parked on the highways road without any signal and without noticing the parked vehicle, the transport corporation's bus driven rashly and negligently hit behind the lorry causing accident. PW2's evidence categorically proves that the negligence was on the part of both drivers. Even Ex.P.1/FIR and Ex.P.9/charge sheet were filed against both the drivers. Therefore, the Tribunal was right in fixing the negligence on the part of both the drivers.

6.The Tribunal while fixing liability referred to Rules of Road Regulations, 1989, which reads as follows:

'15. Parking of the vehicle.-(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:-

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;
- (xi) away from the edge of the footpath.

16. Visibility of lamps and registration marks.-(1) No load or other goods shall be placed on any motor vehicle so as to mask or otherwise interrupt vision of any lamp, registration mark or other mark required to be carried by or exhibited on any motor vehicle by or under the Act, unless a duplicate of the lamp or mark so marked or otherwise obscured is exhibited in the manner required by or under the Act for the exhibition of the marked or obscured lamp or mark.'

From the above it is clear that when a vehicle is parked there should be a signal to show that there is a vehicle parked. In this case, it has been proved that the lorry was parked without any signal and therefore, the Tribunal was right in fixing the negligence both on the driver of the lorry as well as transport corporation equally. Therefore, the said finding cannot be interfered with and the same is confirmed.

7. It is proved before the Tribunal that the deceased was working as a Government School Teacher and was earning about Rs.37,860/- as per Ex.P.18/Salary certificate. His age was determined as 49 years at the time of accident, based on Ex.P.5/death certificate. Since the age of the deceased is 49 years, 30% has to be added as future prospects. After adding 30% towards future prospects, the monthly income would be at Rs.49,218/- [Rs.37,860/- (+) Rs.11,358/-] and the annual income would be at Rs.5,90,616/- (Rs.49,218 x 12).

8.The income tax payable by the claimant for the compensation amount, considering the income tax rates applicable at the relevant point of time is as hereunder.

	Income tax rate	Taxable income	Income Tax
Upto Rs.2,50,000/-	Nil	Rs.2,50,000/-	0
Rs.2,50,001/- to Rs.5,00,000/-	10%	Rs.2,50,000/-	25000
Rs.5,00,001/- to Rs.10,00,000/-	20%	Rs. 90,616/-	18123
Above Rs.10,00,000/-	30%	0	0
Total Income Tax			43123
Add: Education Cess 3% of total income tax			1293
Surcharge			0
Total Tax payable			44416

After deducting income tax, the yearly income would be at Rs.5,46,200/- [Rs.5,90,616/- (-) Rs.44,416/-].

9.Since the size of the family is 3, 1/3rd has to be deducted towards personal expenses. After deducting 1/3rd towards personal expenses, the monthly income would be at Rs.3,64,134/- [Rs.5,46,200/- (-) 1/3rd of Rs.5,46,200/-].

10.According to the age of the deceased, appropriate multiplier to be applied as per the decision in Sarla Verma's case is "13". After applying the correct multiplier, the loss of contribution would be at Rs.47,33,742/- (Rs.3,64,134/- x 13)

11.Loss of estate:

The Tribunal has awarded a sum of Rs.2,000/- under this head. The same is enhanced to Rs.15,000/-.

12.Funeral Expenses:

The Tribunal has awarded a sum of Rs.5,000/- under this head. The same is enhanced to Rs.15,000/-.

13.Transportation:

The Tribunal has awarded a sum of Rs.2,000/- under this head. The same is enhanced to Rs.10,000/-.

14.Loss of consortium:

No amount was awarded by the Tribunal under this head. Hence, this Court awards a sum of Rs.40,000/-.

15. Loss of love and affection:

The Tribunal has awarded a sum of Rs.5,000/- under this head. The same is enhanced to Rs.1,00,000/- as the minor claimants lost their father's love and affection throughout their life.

Head	Amount (Rs.)
Loss of contribution	4733742
Loss of estate	15000
Funeral expenses	15000
Transportation charges	10000
Loss of consortium	40000
Loss of love and affection	100000
Total	4913742

16. Hence the compensation awarded to the claimants comes to Rs.49,13,742/- rounded off to Rs.49,14,000/-. Out of the modified award amount, the claimants are entitled to get their respective shares as per the ratio fixed by the Tribunal. The rate of interest fixed by the Tribunal at 7.5% per annum is also confirmed.

17. The insurance company as well as the Transport Corporation are directed to deposit 50% each of the compensation amount as per the modified award passed by this Court along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the share of the 1st claimant with proportionate interest and costs to her bank account through RTGS within a period of one week thereon. As far as the share of the minors' 2nd & 3rd claimants are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st claimant is permitted to withdraw interest accruing on such deposits once in three months.

18. The claimants are directed to pay the requisite court-fee, if any, before the Tribunal, within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimants as per the ratio fixed by the Tribunal and thereafter, transfer the remaining award amount to the account of the claimants.

19. Accordingly, C.M.A.No.439 of 2018 is dismissed and C.M.A.No.2254 of 2018 is partly allowed, enhancing the compensation amount from Rs.48,95,565/- to Rs.49,14,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 58908
+2 cc to M/s.M.B.Gopalan, Advocate Sr.No. 59282 & 59283
+1 cc to M/s.D.Venkatachalam, Advocate Sr.No. 58750

AKM/18.12.19/7P- 7C /

C.M.A.Nos.439 & 2254 of 2018

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