



C.M.A.No.394 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 06.12.2022	Pronounced on 15.12.2022
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.S.Suguna, W/o.Late N.Srinivasan,
2.S.Suresh (minor), S/o.Late N.Srinivasan,
3.S.Prakash (minor), S/o.Late N.Srinivasan,
4.S.Vignesh (minor), S/o.Late N.Srinivasan,
*2 to 4 minors represented by their mother
and guardian, S.Suguna, 1st Petitioner herein*
5.K.Natarajan, S/o.Late Kesava Naidu,
6.N.Suseela, W/o.K.Natarajan,
all residing at No.1/754, Vaithilingam Road,
Canal, Nellankarai, Chennai 41.

... Appellants

Vs.

1.V.Elumalai,
S/o.Vedagiri, 19, Bharani Street,
Bharathi Nagar, Tharamani,
Chennai 600 113.

2.The New India Assurance Co. Ltd.,
46, 2nd Line Beach,
Moore Street, Chennai 600001

... Respondents



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Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order in MCOP.No.3637 of 2002, dated 03.08.2007 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai.

For Appellants : Mrs.Ramya V.Rao

For Respondents : Mr.M.Krishnamoorthy (for R2)

R1 - No appearance

J U D G M E N T

The Appeal has been filed against the fair and decreetal order made in MCOP.No.3637 of 2002, dated 03.08.2007 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai.

2.The claim Petitioners are the Appellants herein and are legal representatives of the deceased Srinivasan. For the sake of convenience, they are referred to as per their ranking before the trial Court.

3.The claim Petitioners filed the above claim Petition, seeking compensation for the death of the husband of the 1st Petitioner in a road accident. In the claim Petition it is pleaded that the deceased Srinivasan, husband of the 1st Petitioner, was working as a lorry cleaner in a lorry having registration No.TN 22 C 7695, which was engaged by the Corporation to fill up



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the potholes in the road on 24.10.2011.

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4.On 24.10.2001 at about 08.00 hrs., the deceased was travelling in the tipper lorry, bearing Registration No.TN 22 C 7695, which was proceeding from Neelankarai 14th Cross Street, Bharathiyar Nagar, Neelankarai. When the lorry was in the process of filling the potholes, the driver operated the lorry and raised the body of the lorry through hydraulic machine, without seeing the live electric wire ahead in a rash and negligent manner, endangering public safety, due to which the body of the lorry came into contact with live electric wire and the deceased person was electrocuted and died on the way to hospital. The accident took place solely due to the rash and negligent act of the lorry driver.

5.On the above pleadings the claim Petitioners filed the above MCOP. The Insurance Company filed counter affidavit before the Tribunal alleging that it is the own negligence of the deceased, who died due to electric shock and the driver of the tipper lorry was not responsible for the same. Owner of the vehicle remained exparte. Insurance Company filed necessary application under Section 170A of the Motor Vehicles Act.



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6. During the trial, on the side of the Petitioners, 1st Petitioner was examined as PW1 and eye witness was examined as PW2 and Ex.P.1/Post mortem Report, Ex.P.2/Death Report, Ex.P.3/Death Certificate, Ex.P.4/Legal heir Certificate, Ex.P.5/FIR were also marked on the side of the Petitioners. On behalf of the 2nd Respondent/Insurance Company, Head Constable, who has filed final report was examined as RW1 and Ex.R1/final report was also marked, staff of the Insurance Company was examined as RW2 and Ex.R2/Insurance policy was marked, private investigating officer appointed by the Insurance Company was examined as RW3, letter of his appointment was marked Ex.R3 and investigation report was marked as Ex.R4.

7. On consideration of oral and documentary evidences, the trial Court held that the accident has not taken place during the course of motor vehicle operation and therefore, it is not the motor accident injury and accordingly rejected the case of the Petitioners. Hence, the Appeal.

8. In support of his case, learned counsel for the Appellants relied upon the following judgments:

1. United India Insurance Company Limited Vs. V.Dharmarasu



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and Others, reported in MANU/TN/8706/2007

2.New India Assurance Co. Ltd., Vs. Yadu Sambhaji More & others, reported in 2011 (1) TN MAC 144 (SC)

3.Kalim Khan and others Vs. Fimidabee and others, reported in 2018 (2) TN MAC 17 (SC)

9.Heard the learned counsel appearing on behalf of the respective parties.

10.The 1st Petitioner, who was examined as PW1, has categorically stated that her husband was employed as cleaner in the alleged lorry, which is insured with the 2nd Respondent insurance company. It is seen from Ex.R2/insurance policy of the vehicle that the vehicle is the tipper lorry with hydraulic function and the driver of the lorry was taking reverse and the deceased was standing near the potholes, so as to guide the lorry driver, while taking reverse. Thereafter, the driver proceeded to raise the hydraulic and when it is going fill the potholes, the deceased, who is standing on the back side of the lorry, on noticing that the raising tipper portion of the lorry is likely to touch the electric wire on the road, has signalled the driver by tapping the body of the lorry. When he was signalling by touching the body of the lorry, the tipper portion has come into contact with the live electric wire, thereby, the entire lorry was



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contacted with live current and it passed through the body of the deceased and he died.

11.The manner of the accident as extracted above is duly reflected in Ex.P.1/FIR, so also in Ex.P.1/Post mortem report and Ex.P.2/death certificate, so is the oral evidence of PW2, who is the occurrence witness and RW3/private investigating officer also deposed before the Court on the same lines and hence, the contention raised by the insurance company that there is marginal variation in the pleadings with that of the evidence is bad and insignificant. In view of the consistency of the evidence on the side of the Petitioners as well as Respondents, besides both oral and documentary evidence, as to the manner of the accident as spoken to by PW2 coupled with Ex.P1 and Ex.P.2, duly corroborated by oral evidence of RW1 and Ex.R1 coupled with Ex.R.4, this Court has no hesitation to hold that it is a motor vehicle accident. Contra finding recorded by the trial Court is unsustainable in law. In view of the nature of the policy, the owner of the vehicle and the insurance company are jointly and severally liable to pay the compensation. Hence the second Respondent/Insurance Company is liable to pay compensation on behalf of the owner of the lorry/1st Respondent, as there is valid insurance policy.



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12.The accident had taken place on 24.10.2001 and hence notional income of Rs.2,400/- is fixed and as per the post mortem report/Ex.P1, age of the deceased is fixed at 39 years and as per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others .Vs. Delhi Transport Corporation & another*, reported in *2009 (2) TNMAC 1 (SC)*, right multiplier is “15” and the same is adopted. Since there are 6 dependants 1/4th deduction is ordered and hence the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

$$\text{Rs.2400} \times \frac{3}{4} = \text{Rs.1800/-}$$

$$\text{Rs.1800} \times 12 \times 15 = \text{Rs.3,24,000/-}$$

Since the case is of the year 2001, the principle of future prospects does not apply to the facts and circumstance of the case.

13.The 1st Petitioner as a wife of the deceased is entitled for Rs.40,000/- towards loss of consortium, Rs.15,000/- is awarded towards funeral expenses, Rs.15,000/- is awarded towards loss of estate, Rs.75,000/- each is awarded to the minor Petitioners 2 to 4 towards loss of love and affection and Rs.50,000/-



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each is awarded towards loss of love and affection to the Petitioners 5 & 6.

Since the case is of the year 2002, the minors would have become majors now.

Therefore, all the Petitioners are entitled to withdraw their respective shares.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Loss of income	324000
2	Loss of consortium	40000
3	Loss Love and affection	325000
4	Funeral expenses	15000
5	Loss of Estate	15000
	Total Compensation	719000

In total, the claimants are entitled to a sum of Rs.7,19,000/- (Rupees seven lakh and nineteen thousand only) with interest at the rate of 7.5% per annum from the date of Petition till date of realisation.

14. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. No Costs.

(ii) the 2nd Respondent/insurance company is directed to deposit the award amount of Rs.7,19,000/-, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made, 1st Petitioner/Appellant is permitted to withdraw a sum of Rs.2,69,000/-, Petitioners 2 to 4 are permitted to withdraw a sum of Rs.1,00,000/- each and Petitioners 5 & 6 are permitted to withdraw a sum of Rs.75,000/- each with proportionate accrued interest and costs, by filing necessary application before the Tribunal.

(iv) The appellants/claimants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

15.12.2022

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN.J,

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To

The learned IV Judge,
Court of Small Causes,
Chennai.

Pre-delivery Judgment made in

C.M.A.No.394 of 2014

Dated: 15.12.2022