



Cross Obj.(MD)No.10 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.08.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cross.Obj(MD)No.10 of 2018

in

A.S(MD)No.98 of 2012

1.S.Jeyapriya
2.S.Jeyasudha

... Cross Appellants/
Respondents/Plaintiffs

Vs.

- 1.The District Collector,
Office of the District Collector,
Collectorate Campus,
Madurai Road,
Theni Town and Taluk,
Theni District.
- 2.The Chief Officer of the Indian Army,
(Commandant)
Office of the Indian Army Head Quarters,
New Delhi.



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3.The Brigadier,
Wellington, Ooty.

4.The Home Secretary,
Office of the Ministry of Home,
North Block,
New Delhi.

...Respondents/Appellants/
Defendants

5.S.Vijayakandeepan

...Respondent/Respondent/
Defendant

(Convicted and confined at
Madurai Central Prison)

PRAYER: Cross Objection filed under Order XLI Rule 22 of C.P.C., to call for the records relating to the decree and judgment in O.S.No.26 of 2008, dated 16.12.2010, on the file of the Additional District Judge, Fast Track Court, Periyakulam, Theni District and enhance the compensation and allow the cross appeal.

For Cross Objectors : Mr.R.M.Arun Swaminathan
For R1 : No appearance
For R2 to R4 : Mr.B.Narayan Ram
For R5 : No appearance



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J U D G M E N T

This Cross Objection has been filed by the plaintiffs challenging the judgment and decree of the learned Additional District Judge, Fast Track Court, Periyakulam, Theni District, dated 16.12.2010 made in O.S.No.26 of 2008.

2. The cross objectors are the plaintiffs in the suit in O.S.No.26 of 2008 and the respondents 1 & 2 in A.S(MD)No.98 of 2012. The respondents are the defendants in the said suit. The cross objectors filed a suit in O.S.No.26 of 2008 seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) from the respondents for the death of their parents due to the unlawful, illegal act of the fifth respondent. After trial, the trial Court, by judgment and decree, dated 16.12.2010, partly decreed the suit in favour of the plaintiffs and awarded compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the plaintiffs with interest at the rate of 6% from the date of petition till the date of realization. Challenging the said



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judgments and decree, the defendants were filed the appeal in A.S(MD).No. 98 of 2012 and the plaintiffs have filed Cross Objection 10 of 2018.

3.The brief facts of the case are as follows:

(I) Both the plaintiffs are sisters. They were lived at Lakshmipuram Pudupatti with their parents. At the time of accident, the first plaintiff completed diploma and 2nd plaintiff studied II year at College in Course of B.A. The neighbour of the house is 5th defendant, who at the time of the accident working in the Army. He is a bachelor. On 13.01.2002 this 5th defendant, who escaped from the Velington, Ooty Army unit with an A.K.47 Rifle and came to Lakshmipuram Pudupatti unlawfully, illegally arrived the house of plaintiffs at about 05.30 a.m., shot their mother Chandra first and shot their father Srinivasan and shot plaintiffs and others also. Due to this above incident, the plaintiffs mother Chandra and their father Srinivasan died, plaintiffs got several grievous injuries also. The said unlawful, illegal act of the 5th defendant happened solely the sheer carelessness and negligence of 3rd defendant. It all caused due to the third



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defendant whose negligence.

(ii)The negligence could not be construed as mere negligence it is sheer improper functioning of the unit hence, 5th defendant could easily come out of the third defendant unit and on guilty intention shot with AK-47 Gun. The weapon is belong to 3rd defendant from that weapon the fifth defendant shot the plaintiffs parents and both of them died. Hence, the third defendant is liable and answer for the same and to compensate the loss. The act of the 5th defendant is malafide in nature and punishable one. But the act of the third defendant on whose carelessness the above death caused that too with the weapon belongs to 3rd defendant, the said weapon and other materials all seized by police. The case was registered against the fifth defendant in Cr.No.39 of 2002 by the Thenkarai Police Station and he was arrested by the police. The same crime number is charge sheeted and the same is under trial. The plaintiffs, who are now parentless, are at the age of marriage. The incident which wreck the family of the plaintiffs. They are now under almost orphans. They lost their love and affection of their



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parents. The incident which happens only on the sheer negligence of 3rd defendant and therefore, all jointly and severally liable to compensate the lose of their parents.

(iii) Due to the incident, the plaintiffs also got injuries and both of them taken treatment, for which they spent Rs.2 lakhs as treatment expenses. It all happens because of poor administration of the third defendant. If the incident not happened, the plaintiffs ought to have achieve their goal in their life with pleasure and utmost faith and along with their parents. Plaintiffs sent notices to the Home Secretary, New Delhi, the Army Chief and President of India. The president of India got immunity and are formally sent notices to him. The other parties are necessary party to the proceedings. Hence, this suit is filed against all the defendants and all of them are liable to pay the damages. The judgment of Crime.No.39/2002 not binding the plaintiffs. Even though, the plaintiffs, who claimed an amount of Rs.55,00,000/- as compensation, in their notice, they restricted the same as for Rs.25,00,000/- for loss of life of father and mother.



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4. Brief averments stated in the written statement filed by the third defendant are as follows:-

(i) The suit is bad for mis-joinder of party. The plaintiffs contention of attributing negligence on the part of the third defendant is not justified and not agreed to. The service personnel by virtue of the nature of their duties are entitled to bear arms and carry ammunition if the situation warrants. The 5th defendant absented himself from duty with malafide intention with service weapon to wreck personal grievances in his mind, not known to the 3rd defendant. This defendant bonafide believed that he would discharge his official duties without any personal ill-feeling.

(ii) This defendant denied the allegation that due to negligence and improper functioning of the unit, the 5th defendant (Havildar) come out of 4th defendant unit and carried out his design illegally. Moreover, keeping in view of the routine training and administrative duties which have to be carried out in the cantonment individuals posted in the cantonment have to frequently move individually or collectively with or without



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weapons from one place to another as per nature of their duties. It is practically not feasible to closely monitor movement of every single individual by the 3rd defendant. However, the act of misfeasance by the 5th defendant was booked in Crime No.39/2002 by Thenkarai Police Station, after full fledged trial, he was sentenced to undergo life imprisonment by the Fast Track Court, Periyakulam.

(iii) The claim for compensation is not maintainable against this defendant much less 1,2 and 4 defendants in the suit. The allegations attributing negligence and carelessness on the part of the 3rd defendant is incorrect as the weapon in question, I.e., AK-47 Rifle service weapon is the property of Government of India and the 5th defendant absconded with the weapon with malafide intention, without notice to the third defendant and so attributing the negligence on the part of the third defendant is not justified.

(iv) It is denied that this defendant is responsible for the loss of



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the parents and loss of love and affection is denied because, the act committed by the fifth defendant taking the life of plaintiffs' parents and causing injury on the plaintiffs' is personal and individual in nature for which, he was given suitable punishment by the Court of law. So, no claim can lie against this defendant because, the 5th defendant had not committed any act in the discharge of his official duties ordered by this defendant.

(v) As regards claiming compensation for Rs.25 lakhs under various heads for which, this defendant as the Madras Regimental Centre is in no way can be impleaded because, the illegal act of 5th defendant is carrying out his design is individual and personal in nature and as such the vicarious liability fixed by the plaintiffs is not tenable under law. So, the plaintiff can proceed against the 5th defendant only and not against other defendants namely the District Collector, the Chief of Army and the Home Secretary.

5. Brief averments stated in the written statement filed by the



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fifth defendant are as follows:-

The relief sought for in the plaint by the plaintiffs is unknown to law and if at all, they are entitled to any compensation their remedy is elsewhere and hence, the suit is not maintainable. Further more the appeal preferred by the defendant No.5 is pending. Thus, the claim is premature besides not maintainable. It is submitted that all the averments in plaint are denied a false particularly the averments that the weapon belongs to Army and it was pilferaged by the 5th defendant. it is false to state that the 5th defendant is responsible for the alleged occurrence dated 13.01.2002.

6. Based on the above pleadings, the trial Court framed the following issues:-

(i) Whether the plaintiffs are entitled to pay compensation with interest as prayed for?

(ii) Whether the defendant No.5 is liable to pay compensation?

(iii) Whether the defendants 1 to 4 are responsible?



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(iv) To what relief, if any, the plaintiffs are entitled?

7. In order to substantiate the case, on the side of the plaintiffs, the first plaintiff examined herself as P.W.1 and 7 documents were marked as Exs.A1 and A7. On the side of the defendants, one Ramkumar was examined as D.W.1 and 7 documents were marked as Exs.B1 to B7.

8. The trial Court, considering the pleadings, oral and documentary evidence, partly decreed the suit by judgment and decree, dated 16.12.2010. Challenging the said judgment and decree, the plaintiffs have filed this Cross-Objection.

9. The cross-objectors filed the suit before the Additional District Court/Fast Track Court, Periyakulam in O.S.No.26 of 2008 for compensation. The said suit was partly decreed. Challenging the said judgment and decree, the defendants 1 to 4 filed the appeal in A.S.((MD)No. 98 of 2012, in which, the plaintiffs have filed the cross-objection for



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disallowing the claims. During the pendency of the appeal and cross-objection since the appellants have not co-operated for disposal of the appeal, even the appeal was pending from 2012, this Court dismissed the appeal for non-prosecution. However, the plaintiffs filed the cross objection since the appeal was dismissed for non-prosecution, the cross objection has been treated as appeal and taken the cross-objection, heard and pass the present judgment.

10. The learned counsel appearing for the cross-objectors would submit that the cross-objectors are the sisters. The fifth respondent was working as Havildar in the Army. At the time of incident, he was working in the Army Ooty Camp and he left from the camp with AK-47 Rifle and came to the house of cross-objectors, shot the parents of the cross-objectors as well as the cross-objectors. The parents of the cross-objectors lost their life due to shot made by the fifth respondent and even the cross-objectors also sustained several injuries. Since the cross-objectors are the female, both are spinsters and they lost their parents due to unlawful activities of the fifth respondent, who was under the direct control of the third respondent



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and the fifth respondent left from the camp office of the third respondent.

Though the trial Court has rightly fixed the liabilities and failed to consider the fact that the cross-objectors lost their parents and they are at the age of 26 and 24 at the time incident and it is very difficult for them to survive in the present situation without the parents.

11. He would further submit that due to the loss of their parents, they could not get marry within the time and also not only lost the income of the parents and also lost their love and affection of their parents. Though the cross-objectors claimed a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation, the trial Court only awarded a sum of Rs.15,00,000/- (Rupees Fifteen lakhs only) and this cross-objection has been filed challenging the disallowing portion of Rs.10,00,000/-. When the trial Court correctly fixed the liability on the respondents, failed to consider the financial status of the plaintiffs family. Even though, their loss cannot be compensated with the money, but however, considering their age and being the females, without their parents, it is very difficult to survive the female.



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Therefore, the cross-objection has to be allowed.

12. Though sufficient opportunities were given in the appeal for the appellants/respondents, they have not come forward to argue the matter, therefore, the appeal was dismissed for non-prosecution. The appellants are the respondents in the cross-objection and therefore, the counsel for the cross objector is heard.

13. Admittedly, the fifth respondent was working as Havildar in Indian Army. During the relevant period, the fifth respondent was working in the Military camp office Ooty under the control of the third respondent. Though the cross objectors are residing with their parents at Lakshmipuram Post, Periyakulam Taluk, the fifth respondent on 13.01.2002 escaped from the third respondent army camp with AK-47 Rifle and came to the cross-objectors home at 5.30 p.m., and shot the cross-objectors and their parents. Their father and mother were died and the cross-objectors also sustained severe injuries. The criminal case was registered against the fifth



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respondent and he was convicted. Therefore, the incident was proved and there is no dispute with reference to the occurrence. At the relevant point of time, the cross-objectors are aged about 26 & 24 years. The cross-objectors lost their parents, being an un-married women, they could not survive easily when all of a sudden they lost their parents, their future also in question and hence, they filed the suit for compensation.

14. The defence taken by the respondents 1 to 4 in the trial Court was that the fifth respondent is only responsible for the incident and he was also convicted for the crime committed by him and the other respondents are no way responsible for the incident. The fifth respondent escaped from the office without informing the third respondent and subsequently, a criminal case was registered against the fifth respondent and was convicted and disciplinary proceeding was also taken by the department and he was dismissed from service. However, the trial Court found that all the respondents 1 to 4 are vicariously liable since the fifth respondent escaped from the camp office with AK-47 Rifle. If a person easily come out from



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the Military camp with the deadly weapons, naturally, the third respondent is vicariously liable for the act committed by the fifth respondent even he came out of office knowingly or unknowingly.

15. For convicting the person in the criminal case, nothing to do with the present case for claiming compensation by two unfortunate girls, who lost their parents on a single day due to criminal activities of the fifth respondent, who is working under the control third respondent at the relevant point of time. The respondents 1 to 3 are under the control of the fourth respondent. When they could not prevent the fifth respondent either directly or indirectly, they are responsible to compensate the cross-objectors since no fault on their part and they lost their parents, their future are in questionable because of the criminal action committed by the fifth respondent. Therefore, all the respondents are jointly and severally liable to pay the compensation. The trial Court though rightly fixed the liability, however, failed to consider the age of the cross-objectors, who lost their parents unexpectedly due to criminal act committed by the fifth respondent.



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16. Due to the death of their parents, the cross-objectors not only lost income of their parents but also the support and guidance of the parents. The presence of their parents is necessary since the age of the cross-objectors is 26 and 24 and it is very difficult for them to survive at the teenage without the help of the parents. Their safety also questionable in the present situation. Therefore, considering the facts and circumstances of the case and also considering the fact that the cross-objectors lost their parents on a single day and they also sustained injuries and recovered from that. Therefore, the trial Court though granted a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation which is not just and proper compensation since the cross-objectors seeking the common law remedy and the respondents are vicariously liable to pay the compensation.

17. Therefore, the judgment and decree passed by the trial Court are set aside and the cross-objectors are entitled to get the entire suit claim. The trial Court has rightly fixed the liability, but, however granted a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation instead of



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Rs.25,00,000/-. Therefore, this Court allowed the cross-objection and enhanced the compensation from Rs.15,00,000/- (Rupees Fifteen Lakhs only) to Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and the respondents are jointly and severally liable to pay a sum of Rs.25,00,000/- with interest at the rate of 6% per annum from the date of filing of the suit till the date of realisation with the cost of both the suit and the cross objection. However, if the respondents 1 to 4 feels that the fifth respondent is liable to pay the compensation independently they are at liberty to recover the same from the fifth respondent after paying the amount to the cross-objectors.

18. In the result, the Cross-Objection is allowed.

01.08.2022

Index : Yes / No

Speaking Order : Yes / No

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P.VELMURUGAN, J.

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To

- 1.The Additional District Judge,
Fast Track Court,
Periyakulam, Theni District
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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