



WEB COPY



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2023

Pronounced on : 03.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022
and CMP.No.11999 of 2022

C.M.A.No.1618 of 2022 :

United India Insurance Company Ltd
Sri Sugam Complex, College Road
Namakkal.

Having Branch Office at :
Pallivasal Street, Perambalur.

... Appellant / 2nd Respondent

Vs

- 1.Annapattu
- 2.Ranjith
- 3.Ranjini
- 4.Minor.Ragul

Represented by his next friend and natural guardian
and mother Annapattu

- 5.Chinnammal
- 6.Palaniappan
- 7.Sathyamoorthy

... Respondents

Cros.Obj.No.93 of 2022 :

- 1.Annapattu
- 2.Ranjith
- 3.Ranjini



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

4.Minor.Ragul

Represented by his next friend and natural guardian
and mother Annapattu

5.Chinnammal

... Cross Objectors

Vs

1.United India Insurance Company Ltd
Sri Sugam Complex, College Road
Namakkal.
Having Branch Office at :
Pallivasal Street, Perambalur.

2.Palaniappan

3.Sathyamoorthy

... Respondents

PRAYER in CMA.No.1618 of 2022: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, praying to set aside the award and decree dated 30.07.2021 made in M.C.O.P.No.680 of 2017 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur.

PRAYER in Cros.Obj.No.93 of 2022: Cross Objection filed under Order 41 Rule 22 of CPC, praying for enhancement of compensation awarded in the judgment dated 30.07.2021 made in M.C.O.P.No.680 of 2017 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur.

In C.M.A.No.1618 of 2022 :

For Appellant

: Mr.D.Baskaran

For Respondent

: Mr.S.P.Yuvaraj for R1 to R5
R6 - No Appearance



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

In Cros.Obj.No.93 of 2022 :

For Cross Objectors : Mr.S.P.Yuvaraj

For Respondents : Mr.D.Baskaran for R1

COMMON JUDGMENT

The appellant is the insurance company and it challenges the quantum of compensation awarded by the MACT, Perambalur, in MCOP.No.680/2019

2. On 05.02.2016, at around 8.00 a.m., a certain Nagarajan died in a road accident at Perambalur-Thanjavur bye-pass road. So far as the manner in which the accident had taken place, according to the claimants, who are the dependants of the victim, Nagarajan was riding his motorcycle bearing No.TN02 W 6324 and was forced to dash against the rear side of the moving lorry bearing No.TN28 AW 8896, when the lorry suddenly stopped when the driver of the lorry suddenly applied brakes without any indication. Nagarajan died on the spot. P.W.2 claims himself to be the eye-witness to the accident, and he speaks to the same.



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

3. The respondents 6 and 7 in this appeal, are the owner of the lorry and owner of the motorcycle respectively and they remained exparte, and the insurance company of the lorry defended the action. According to it, the driver of the vehicle preferred a complaint to the concerned police station, who registered an FIR in Crime No.80/2016 of Ariyalur Police Station. As per the version of the driver of the lorry, he had parked the vehicle to attend to ease himself, and the victim had dashed against the rear side of a stationary lorry.

4. The victim is stated to be 41 years and was also stated to be a driver by avocation, and since he did not produce any evidence to prove his income, the Tribunal fixed his notional income at Rs.7,500/- per mensem. And after providing for future prospects and applying 14 as the multiplier, and after deducting 1/4th towards personal expenditure, it arrived at net loss of dependency at Rs.11,81,250/-. After adding other conventional heads of compensation, it fixed the compensation at Rs.12,51,250/-, which it directed the Insurance Company and the owner of the lorry to pay.

5. According to the appellant, the lorry in question was not the offending



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

vehicle, but the victim of the motorcycle with his rash and negligent driving had invited upon himself his ultimate end. The Tribunal accepted this case, and had dismissed the case of the claimants that the driver of the lorry suddenly applying brakes as the cause of the accident, but it went on to hold that the driver of the lorry was negligent in not providing any indication that the lorry was parked.

6.The learned counsel for the insurance company (appellant in CMA.No.1618 of 2022) submitted :

(a) The claimants themselves rely on the FIR, registered at the instance of R.W.1 and they do not dispute it. If only they had disputed it, they could have preferred a counter case against the driver of the vehicle. Indeed the Investigating Agency has also found the victim singularly at fault in causing the accident.

(b) In the M.V. report of the motorcycle driven by the victim (marked as Ext.R5), the entire front portion of the bike seem smashed. Admittedly, the bike had hit the lorry from behind. Even if the theory of the claimants that the lorry was in motion at the time of accident, and that the driver of the vehicle had suddenly applied the



WEB COPY



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

brakes, and given the manner in which the accident had taken place, again it indicates that the rider of the motorcycle was singularly responsible.

(c) Ext.R1 is the rough sketch prepared by the Investigating Agency, and it shows that the road where the accident took place is substantially a straight road, and if the victim had to hit the lorry from behind, the way the claimants claim, then unless the victim was riding the bike at an uncontrollable speed, he could not have avoided the accident.

(d) It was around 8.00 a.m when the accident took place, and the day had sufficiently broken, and hence there was hardly any need to switch on the parking lamps to attribute negligence entirely on the driver of the lorry.

7. On the side of the claimants, they have preferred a cross appeal claiming *inter alia* that the notional income as fixed by the Tribunal is far too inadequate for a lorry driver and that the Tribunal has not awarded anything for the loss of love and affection to the three children and the mother of the victim. Turning to the respondents/claimants, they submitted that at least



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

Rs.20,000/- be fixed as notional income.

WEB COPY

8. There are two versions for one accident, and it revolves around one fact: Whether the lorry in question was moving or stationary. And, in both the instances, what is the extent to which duty to care was cast on the rider of the motor cycle, who was riding on the rear side of the lorry. Let both the situations be discussed. After all the dynamics of no accident can be explained easily. What is generally attempted is re-creation of an accident with available materials and forming an opinion about the way an accident might have occurred.

9.1 First to the version of the insurance company. Let the lorry be considered as stationary. And, why it remained stationary? It's driver, the R.W.1, had gone to ease himself. It may be absolutely understandable, but still cannot be appreciated within the scheme of the M.V.Act. Sec.126 of the Act bars parking a vehicle in public place for any compelling physiological demands of the driver. And it must be read along with Sec.122 of the Act. They read:

" 122. Leaving vehicle in dangerous position :- No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place



WEB COPY



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

126. Stationary vehicles :- *No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver."*

They are now required to be read along with Rule 15 of the Central Rules of the Road Regulations, 1989, which was in force when the accident took place in 2016. It reads:

"15(1) Parking of the vehicle: *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."*

9.2 These rules were later superseded by Central Motor Vehicles (Driving) Regulations, 2017. It defines 'parking' in Regulation 2(j) and it reads as below:



WEB COPY



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

*“2(j) “parking” means the bringing of a vehicle to a stationary position and causing it to wait for any purpose other than that of immediately taking up or setting down persons, goods or luggage, **and includes stopping for more than three minutes;***

Regulation 22 thereof, is more in tune with Sec.122 and 126 of the Act, when it literally prohibits parking a motor vehicle in a public place. And if Regulation 28 is turned to, it only provides for parking a vehicle in case of a breakdown and also prescribes the nature of precautions to be taken.

10. Therefore, at all times there are rules or regulations on parking which a driver is mandated to follow. A driver has no choice here, if legal consequence of what may be an innocent act of parking a vehicle in public place comes under judicial scrutiny. Here in this case, if the version of the lorry driver is considered, by parking the vehicle in a public road, or road side, he had breached the parking regulations, and thus his duty to care. This Court holds that the Tribunal is right in fixing negligence on the driver. But the point is should the entire blame be attributed to the driver of the lorry alone?

11. Who had the best opportunity to avoid an accident? To state it



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

differently, merely because a lorry is parked contrary to statutory prescription, does it necessarily mean a rider of the motorcycle should run on to a parked vehicle suicidally. Does not the rider of the motorcycle has an identical duty? The accident had taken place at around 8.00 a.m. in the morning, and it was not dark, and it eliminates any possibility of lack of adequate visibility for the rider of the two wheeler to miss a parked lorry. Therefore, the motorcyclist did have an opportunity to avoid the accident, if only he was concerned about his own duty to care.

12. Therefore, it is a question of apportioning negligence, and this Court considers that distributing it in the ratio of 40% : 60% as between victim of the accident and the driver of the lorry would be most appropriate. This is for version One.

13. Turing to the other version – the Claimant's version, a moving lorry suddenly stopped as its driver applied brakes without indication. Does the situation necessarily require that a motorcyclist riding his vehicle behind the lorry should necessarily dash against the lorry? After all, riding an automobile on the road involves lot of anticipation. When a lorry is moving



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

on the road, then the two wheeler coming on to its rear side might not have the visibility to the happenings in front of the lorry, and should always anticipate that the lorry driver might apply brakes suddenly to avoid some accident. For the lorry driver, applying brakes might be unavoidable and inevitable, which he may do almost instinctively, unless he is keen to murder a road user coming behind. And, for the one who is riding a motorcycle behind the lorry, preventing an accident is always avoidable, if only the motorcyclist is conscious of his duty to take reasonable care in avoiding an accident. Viewed thus, in the instant case, the victim of the accident apparently had failed to take adequate care of his own life. The conclusion is to state the obvious. Even if the lorry is moving, the motorcyclist, the victim of the accident, had failed in anticipating a situation such as the one the claimants plead, and breached his duty to care. The negligence still may have to be apportioned, and this will well fit in with the ratio as was decided for earlier version: 35 % for the victim, and 65% for the lorry driver.

14. Turing to the second part, it is all about the adequacy of compensation as determined by the tribunal. This is the subject matter of the the cross objection. The victim was stated to be a driver working with RPK transport,



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

and while the claimants had produced his driving licence and badge, they did not choose to furnish any documents to prove his income. In these circumstances, the Tribunal had notionally fixed the income for the victim at Rs.7,500/- p.m, to which it added another 25% towards future prospects as he was 41 years at the time of his death, and after applying 14 as multiplier, and deducting 1/4th towards personal expenditure of the victim, the Tribunal determined the loss of dependency at Rs. 11,81,250/-. After providing for other conventional heads of compensation, the Tribunal had determined the total compensation at Rs.12,51,250/- which it directed both the owner and the insurer of the lorry to pay with interest at 7.5% p.a. The components of quantum of award of the Tribunal is as below:

<i>Heads of Compensation</i>	<i>Award of the Tribunal Amount (Rs.)</i>
Loss of dependency	11,81,250.00
Loss of consortium	40,000.00
Loss of estate	15,000.00
Funeral expenses	15,000.00
Total :	12,51,250.00

15. This Court considers that the Tribunal's choice to fix the notional income of the victim, a driver who supports a family of five members, is a bit unrealistic. And this Court considers that going by 2016 standards, the



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

victim would have at least earned Rs.12,000/- per month, to which another 25% is required to be added towards future prospects, and deducting 1/5th towards his personal expenditure, the net value of loss of dependency would be Rs.20,16,000/-. Turning to compensation towards loss of love and affection, the Tribunal has not awarded anything for claimants 2 to 5. They are now awarded Rs.40,000/- each. Retaining the compensation awarded on loss of consortium, loss of estate and funeral expenses, the total compensation amount would be as below :

<i>Heads of Compensation</i>	<i>Revised Amount (Rs.)</i>
Loss of dependency	20,16,000.00
Loss of consortium	40,000.00
Loss of love and affection	1,60,000.00
Loss of estate	15,000.00
Funeral expenses	15,000.00
Total :	22,46,000.00

From this, 35% is liable to be deducted towards contributory negligence attributed by the victim. Therefore, the revised net-compensation amount would be Rs.14,59,900/-.

16. In conclusion, the appeal filed by the insurance Company is partially



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

WEB COPY

allowed and so is the cross objection filed by the claimants, and the award is modified to the extent indicated above. The insurance company is now directed to deposit the above determined compensation amount of Rs.14,59,900/- before the Tribunal along with interest @ 7.5% per annum, less any amount already deposited, within a period of six weeks from the date of receipt of certified copy of this order, upon such deposit, the claimants are permitted to withdraw the same forthwith, The enhanced portion of compensation with accrued interest thereon shall be divided equally between the claimants 2 to 4. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order

ds

To:

- 1.The Principal District Judge)
Motor Accidents Claims Tribunal
Perambalur.
- 2.The Section Officer
VR Section, High Court, Madras.



WEB COPY



C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
C.M.A.No.1618 of 2022
and Cros.Obj.No.93 of 2022