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C.M.A.Nos.2983, 2984 and 2985 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**  
and  
**THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.M.A.Nos.2983, 2984 and 2985 of 2021  
and  
CMP.Nos.16999, 17005 and 17008 of 2021

**C.M.A.No.2983 of 2021**

The Branch Manager,  
Royal Sundaram Alinace Insurance Co. Ltd.,  
Mangalam Buildings, Salem.

...appellant

Vs.

1. Mrs.Uma  
S/o.Chenniyangirinathan
2. Minor Nagalakshmi  
D/o.Chenniyangirinathan
3. Minor Keerthi Varma  
D/o.Chenniyangirinathan
4. Mrs.Visalakshi  
W/o.Thandapani Gurukkal  
[Minors are rep. by their mother and  
natural guardian Mrs.Uma]
5. Arumugam  
S/o.Arumugam
6. P.Arumugam

...respondents



C.M.A.Nos.2983, 2984 and 2985 of 2021

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**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2019 passed in MCOP.No.73 of 2012 on the file of the Motor Accidents Claims Tribunal-cum-Second Additional District Court, Tiruppur.

|                 |                        |
|-----------------|------------------------|
| For Appellant   | : Mr.G.Vasudevan       |
| For Respondents |                        |
| for RR1 to 4    | : Mr.Ma.P.Thangavel    |
| for R5          | : Insufficient address |
| for R6          | : Mr.N.Chinnaraj       |

**C.M.A.No.2984 of 2021**

The Branch Manager,  
Royal Sundaram Alinace Insurance Co. Ltd.,  
Mangalam Buildings, Salem.

...appellant

Vs.

1. Ramanathan  
S/o. Thandapani Gurukkal
2. Arumugam  
S/o. Jadaian
3. P.Arumugam

...respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2019 passed in MCOP.No.118 of 2012 on the file of the Motor Accidents Claims Tribunal-cum-Second Additional District Court, Tiruppur.



C.M.A.Nos.2983, 2984 and 2985 of 2021

For Appellant : Mr.G.Vasudevan  
For Respondents : Mr.Ma.P.Thangavel  
for R1 : Insufficient address  
for R2 : Mr.N.Chinnaraj  
for R3

**C.M.A.No.2985 of 2021**

The Branch Manager,  
Royal Sundaram Alinace Insurance Co. Ltd.,  
Mangalam Buildings, Salem.

...appellant

Vs.

1. Prabunathan  
S/o.Thandapani Gurukkal  
2. Arumugam  
S/o. Jadaian  
3. P.Arumugam

...respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2019 passed in MCOP.No.119 of 2012 on the file of the Motor Accidents Claims Tribunal-cum-Second Additional District Court, Tiruppur.

For Appellant : Mr.G.Vasudevan  
For Respondents : Mr.Ma.P.Thangavel  
for R1 : Insufficient address  
for R2 : Mr.N.Chinnaraj  
for R3



C.M.A.Nos.2983, 2984 and 2985 of 2021

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## **COMMON JUDGMENT**

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

The Insurance Company is on appeal challenging the award of sum of Rs.18,50,000/- for the death of one Chenniyangirinathan aged about 31 years in a road accident that occurred on 08.06.2012 at about 13.40 hours at Kovai-Salem NH-47 and also the award of Rs.25,000/- for the injuries suffered by the occupants of the vehicle viz., one Ramanathan and Prabuanathan that was driven by the deceased.

2. According to the claimants, the Eicher Van bearing Registration No.TN-29-AL-5410, was parked on the middle of the Highway and the deceased was driving an Ambassador Car bearing Registration No.TN-33-F-4775 from South to North on the Kovai-Salem NH-47. Though the deceased sighted the Van that was parked on the road, could not control the Car, resulting in the collision. As a result of the accident, while Chenniyangirinathan, the driver of the Car died and the other two occupants suffered injuries. Contending that the deceased was working as a priest and



earning about Rs.10,000/- per month, the claimants, who are wife, children and mother, sought for a compensation of Rs.20,00,000/- and the injured persons sought for a compensation of Rs.5,00,000/- each.

3. The Insurance Company resisted the claim contending that as per the FIR lodged by the brother of the deceased, who was a co-passenger, the accident took place due to the rash and negligent driving by the driver of the Car. Since the vehicle insured with the Insurance Company viz., Eicher Van was parked on the mud road, no negligent could be attributed to the driver of the Van.

4. Before the Tribunal, the first claimant in MCOP No.73 of 2012 was examined as PW1 and 3 other witnesses were examined as PWs.2 to 4, of whom PWs.3 and 4 are the injured claimants in the other M.C.O.Ps. viz., MCOP.Nos.118 and 119 of 2012. PW2 was the co-worker. Exs.P1 to P4 were marked. On the side of the respondents, RW1 to 3 were examined and Exs.R1 to R11 were marked. The Tribunal upon assessment of the evidence on record concluded that the parked Van was responsible for the accident. Since it was parked on the carriageway of the National Highway, which is a



no parking zone, the Tribunal fixed the entire negligence on the driver of the

Van.

5. On quantum, the Tribunal took the monthly income of the deceased at Rs.8,000/-, added 40% towards future prospects, deducted 25% towards personal expenses, applied multiplier 16 and arrived the total Loss of Dependency at Rs.16,12,800/-. It also awarded a sum of Rs.1,00,000/- towards Loss of Love and Affection by awarding Rs.25,000/- for each of the claimants and Rs.1,60,000/- towards Loss of Consortium again awarding Rs.40,000/- for each of the claimants. The Tribunal also awarded a sum of Rs.15,000/- towards Funeral Expenses and Rs.10,000/- towards Transportation. Thus in all, the Tribunal arrived at the compensation of Rs.18,97,800/- and rounded it off to Rs.18,50,000/-. As far as the injured claimants are concerned, the Tribunal awarded a sum of Rs.25,000/- for each.

6. Mr.G.Vasudevan, learned counsel appearing for the appellant/Insurance Company would vehemently contend that the Tribunal erred in fixing the entire negligence on the parked Van relying heavily on the FIR and other evidence that is available. The learned counsel would contend



that there was a greater negligence on the part of the driver of the Car, who contributed to the accident. He would also contend that the quantum of compensation awarded is also on the higher side.

7. Mr.Ma.P.Thangavel, learned counsel appearing for the claimants would submit that RW1, who is an official of the Insurance Company, had admitted that the Van was parked in the carriageway without any signal and that by itself would amount to negligence. In support of his contention, he would also draw our attention to the judgment of a Division Bench of this Court in *United India Insurance Co. Ltd., vs. A.Semmalar and Others* reported in **2019 (1) TNMAC 22** to which one of us (MR.JUSTICE R.SUBRAMANIAN) was a party.

8. We have considered the rival submissions. We have gone through the evidence of RW1, toposketch as well as the rough sketch that was prepared by the Police during the process of investigation. We find that the claim of RW1 that the Van was parked on the mud road is incorrect. The toposketch shows that the Van was parked on the carriageway. Parking on a National Highway that too on the carriageway by itself would amount to



negligence on the driver of the vehicle and that too a heavy vehicle.

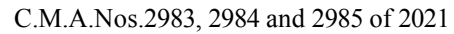
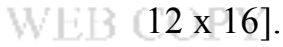
However, it is no doubt that the accident had occurred in the afternoon, therefore, the driver of the Car could have easily spotted the parked vehicle.

9. We should also take note of the fact that if a vehicle was parked on the National Highway without any signal and any driver of an on-coming vehicle could be very easily misled into thinking that it a vehicle, which is on the run. More often, the drivers realise that the vehicle ahead of them is not moving only when they come close to the vehicle ahead of them. The time that is available for them to either negotiate or to stop the vehicle is seldom enough to enable them to avoid the accident. Therefore, in cases where the vehicles are parked on the carriageway that too in a National Highway, major negligence should be attributed only to the driver of the parked vehicle. It would be a different case, if it is shown that the vehicle was parked due to some mechanical failure and there was enough indications that the vehicle is not moving. In the case on hand, the evidence of RW1 would go to show that there is no evidence to the effect that the driver of the parked vehicle had taken some effort to forewarn the vehicles approaching the parked vehicle by switching on the indicators or by keeping some kind of warning sign to show that the vehicle is not moving. In the



absence of such evidence, we have to necessarily conclude that the negligence on the part of the driver of such vehicle is more. In the precedence that is relied upon by the learned counsel for the claimant, we have fixed the negligence at 75% on the driver of the parked Lorry and 25% on the rider of the Car, which came from behind and dashed against the stationary vehicle. The said accident had occurred at 6.15 a.m. in the month of January where visibility is generally low. In the case on hand, the accident had occurred at 1.40 p.m. in the month of June, where there cannot be any problem of visibility. Therefore, we are of the considered opinion that the negligence could be apportioned at 60% on the driver of the Van and 40% on the driver of the Car.

10. Adverting to the quantum, though there is no cross-appeal, we find that the income adopted by the Tribunal is very low. Taking into account that the accident had occurred in 2012 and the claimants themselves stated that the deceased was earning Rs.10,000/- per month, we adopt the same as the income. If we add 40% towards future prospects, the monthly income would be around Rs.14,000/-. We deduct 25% towards personal expenses, the monthly contribution would be Rs.10,500/-. Since the deceased was aged 31 years, the multiplier would be 16. Therefore,



the Loss of Dependency to the claimants would be Rs.20,16,000/- [10,500 x 12 x 16].

11. The claimants would also be entitled to a sum of Rs.1,60,000/- towards Loss of Consortium. The award for Loss of Love and Affection at Rs.25,000/- per claimant is not justified. Since the first claimant would be entitled to Rs.40,000/- towards Loss of Consortium and the claimants 2, 3 and 4 would be entitled to Rs.40,000/- each towards Loss of Love and Affection, the award under the head Loss of Love and Affection at Rs.25,000/- per claimant stands set aside. The claimants are also entitled to Rs.15,000/- towards Funeral Expenses, Rs.10,000/- towards Transportation and Rs.15,000/- towards Loss of Estate. Thus, the claimants are entitled to a total compensation of Rs,22,16,000/- [20,16,000 + 1,60,000 + 15,000 + 10,000 + 15,000].

12. Since we have held that the deceased, who is the driver of the Car, was responsible for the accident at 40%, the claimants would be entitled to 60% of the above amount as compensation, i.e., Rs.13,29,600/-, which is rounded off to Rs.13,30,000/-. The claimants would be entitled to interest at 7.5% interest from the date of the claim petition till the date of payment.



13. It is stated that the Insurance Company has deposited the entire award amount and therefore, the Tribunal will pay out the sum of Rs.13,30,000/- with proportionate interest and the cost as awarded by the Tribunal to the claimants/respondents 1 to 4 in CMA.No.2983 of 2021 in the following proportion: i) the first claimant/wife of the deceased would be entitled to 30%, ii) the two minor claimants would be entitled to 25% each and iii) the fourth claimant/mother would be entitled to 20%. The Tribunal is directed to pay out the remaining amount along with any interest accrued to the Insurance Company. The major claimants are permitted to withdraw their share of compensation and the share of the minor claimants shall be deposited in a National Bank with a clause to do renewal till they attain majority.

14. As far as the injured claimants in CMA.No.2984 and 2985 of 2021 are concerned, no negligence could be assigned to them. Therefore, the award granted in the injured cases is confirmed.

15. In fine, CMA.No.2983 of 2021 is allowed in part as and indicated above. The other 2 appeals viz., CMA.No.2984 and 2985 of 2021 will



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stand dismissed. No costs. Consequently, connected miscellaneous petitions

are closed.

**(R.S.M.J.,) (S.S.K.J.,)**

27.01.2023

Index : No

Speaking order: Yes

pvs

To

1. The II Additional District Judge,  
Motor Accidents Claims Tribunal, Tiruppur
2. The Section Officer,  
VR Section High Court, Madras.



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**R.SUBRAMANIAN, J.**  
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