



C.M.A.No.2059 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 14.02.2024	Pronounced on 29.02.2024
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.Poongothai
W/o.Rajalingam

2.Soundharya
D/o.Asaithambi

3.Soundararajan
D/o.Asaithambi

Appellants 1 to 3 are residing at
Naduvathiyam, Kulithalai Taluk
Karur District

Veerammal (died)

4.Sumathi
W/o.Late Asaithambi
No.11/29, Keezhatheru
Vayalur Post, Vayalur
Karur District

... Appellants

Vs.

1.Subbarayan
S/o.Sadaiyappagounder
No.2/38, Reddiyar Veethi, Siluvampatti
Namakkal District

2.The Divisional Manager
National Insurance Company Limited



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No.74A, Paramathy Road
Namakkal District

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against Judgment and Decree dated 26.07.2018 passed in MCOP.No.103 of 2014 on the file of Motor Accident Claims Tribunal/Principal District Judge, Namakkal.

For Appellants : Mr.C.Thangaraju

For Respondents : Mr.J.Chandran (for R2)

J U D G M E N T

The Appeal has been filed against Judgment and Decree dated 26.07.2018 passed in MCOP.No.103 of 2014 on the file of Motor Accident Claims Tribunal/Principal District Judge, Namakkal.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.103 of 2014 on the file of Motor Accident Claims Tribunal/Principal District Judge, Namakkal. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The legal representatives of the deceased Aasaithambi filed



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MCOP.No.103 of 2014, on the file of Motor Accident Claims Tribunal/Principal District Judge, Namakkal, seeking compensation and filed this Appeal on the points of negligence and quantum.

4.During the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P.1 to Ex.P.8 were marked and on the side of the Respondents, none was examined and Ex.C1 to Ex.C3 were marked.

5.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

6.Learned counsel for the claim Petitioners would contend that the Tribunal has wrongly fixed the contributory negligence as 50% on the deceased, while the driver of the offending vehicle has not followed the rules as contemplated under Road regulations, 1989 for parking the vehicle.

7.Learned counsel for the Insurance Company made submissions in support of the judgment of the Tribunal.



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8. On a combined reading of the oral evidence of PW2 coupled with Ex.P.1 and Ex.P.2, I find that on 06.11.2013 at about 07.30 pm, the deceased Asaithambi was proceeding with diligent manner in a TVS XL Super two wheeler bearing Regn. No.TN 28 AH 6474 on Namakkal to Trichy main road to bring his son 3rd Petitioner. At that time, when he was nearing Bagavathi Amman Temple, one Taurus Lorry bearing Reg. No.TN 29 AL 1793 was parked on the left side of the dark road without any parking signal and indicators and the deceased Asaithambi dashed his vehicle in the backside of the taurus lorry and died on the spot itself due to severe head injury. The accident was occurred only due to the negligent act of the 1st Respondent's driver. In the rules of road regulations 1989, it is stated 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 if 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;



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- (iv) on a main road or one carrying fast traffic;*
- (v) opposite another parked vehicle or as obstruction to other vehicle;*
- (vi) along side 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.*

Visibility Of Lamps And Registration Marks

(1) No load or other goods shall be placed on any motor vehicle so as to mark or otherwise interrupt vision of any lamp, registration mark or any other mark required to be carried by or exhibited on any motor vehicle by or under the Act, unless a duplicate of the lamp 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."

9. Taking into consideration about the oral evidence of PW2, the deceased ought to have been very careful while driving the vehicle at 07.30 pm and hence, 25% of negligence is fixed upon the victim and 75% is fixed upon the driver of the parked lorry. Accordingly, the Tribunal's decision with regard to fixing the contributory



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negligence at the ratio of 50:50 on the deceased and the driver of the lorry is hereby vacated and the Insurance Company, who is the insurer of the lorry is liable to pay compensation to the claim Petitioners on behalf of the insured.

10.The first claim Petitioner is the Mother-in-law, second and third claim Petitioners are the children, fourth claim Petitioner is the Mother and the fifth claim Petitioner is the wife of the deceased. On a combined reading of Ex.P.5/post mortem certificate and Ex.P.6/death certificate, the deceased was aged about 43 years at the time of the accident and was working as labour in Kaliamman Service Station, Namakkal and the trial Court has fixed the notional income at Rs.6,000/- per month. However, taking into consideration the year of accident being 2013, I am inclined to fix the notional income at Rs.9,000/-. The Tribunal has added 25% towards future prospects, adopted “14” as multiplier. The same are hereby confirmed and the Tribunal has deducted 1/3rd towards personal expenses of the deceased, the same is modified as 1/4th as the dependents of the deceased is 4 in number. Hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

$$[\text{Rs.9,000/-} + (25\% \text{ of } 9,000\text{-})] \times \frac{3}{4} \times 12 \times 14 = \text{Rs.14,17,500/-}$$

11.The 4th Appellant as a wife of the deceased is entitled for Rs.40,000/-



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towards loss of consortium. The Tribunal has awarded a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses. The same are hereby confirmed. The 1st Appellant is entitled for Rs.50,000/- and Appellants 2 & 3 are entitled for Rs.75,000/- each as loss of love and affection.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	1417500
2	Loss of consortium	40000
3	Loss Love and affection	200000
4	Funeral expenses	15000
5	Loss of Estate	15000
	Total Compensation	1687500
	75% of compensation	1265625

In total, the claim Petitioners are entitled to a sum of Rs.12,65,625/- (Rupees twelve lakh sixty five thousand six hundred and twenty five only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

12.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.4,55,000/- to Rs.12,65,625/- to the extent indicated



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above. No Costs.

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(ii) the Insurance Company is directed to deposit the enhanced award amount, with 7.5% interest per annum (excluding the delay period of 469 days in preferring the Appeal) and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioners 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.

29.02.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order



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To
The Principal District Judge,
Namakkal.



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

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Dated: 29.02.2024