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CMA NO.2388 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 22 / 03 / 2024

JUDGMENT DELIVERED ON: 08 / 04 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.2388 OF 2022

AND

CMP NO.28408 OF 2023

IN

CMA NO.2388 OF 2022

1.Saroja
2.Sabarima
3.Santhiya

... Appellants /
Petitioners

Vs.

1.Narasimman

2.The Branch Manager
New India Assurance Company Ltd.,
New Street, Puducherry.

3.The District Collector
Government of Puducherry
(R-3 *Suo motu* impleaded vide Court
order dated 30.08.2022 made in CMP
No.13875 of 2022 in CMA SR.No.
72376 of 2022)

... Respondents /
Respondents



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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated 05.03.2022 made in M.A.C.T.O.P.No.47 of 2020 on the file of the Additional Motor Accident Claims Tribunal, Puducherry.

For Appellants / : Mr.P.Suresh Babu
Petitioners

For Respondents
1 and 3 : No appearance

For Respondent-2 / : Mr.J.Michael Visuvasam
Respondent-2

J U D G M E N T

R.SAKTHIVEL, J.

Appellants herein are the wife and daughters of the deceased- Mayavan who met with a road accident on September 4th, 2019. Appellants filed Original Petition under Motor Vehicles Act, 1988 before the ‘Additional Motor Accident Claims Tribunal, Puducherry’ (henceforth ‘Tribunal’), praying to pass an award for a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) together with interest and cost in favour of the petitioners. After hearing both sides, the Tribunal dismissed the said original petition in M.A.C.T.O.P.No.47 of 2020 on March 5th, 2022. Feeling aggrieved with the dismissal order, the appellants have preferred this Civil Miscellaneous Appeal.



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2.For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition *i.e.*, 'appellants herein' will be referred to as 'petitioners' and the 'first and second respondents herein' will be referred to as 'respondents'.

3.Since the appellants have no sufficient income to pay court fee and file this appeal, they filed CMP No.13875 of 2022 before this Court praying to declare them as indigent persons and the same was allowed. Hence, the 'third respondent herein' was *suo motu* impleaded by this Court.

Petitioners' case

4.According to the petitioners, on September 4th, 2019 at about 03.20 p.m., the deceased - Mayavan was driving Eicher Vehicle bearing Registration No.TN-32-J-8070, along the Maduravayil Bypass Road, Thirumalai Nagar, Anagaputhur from South to North. While nearing Venkateshwara Auto Spares, an Eicher Vehicle bearing Registration No.TN-05-S-5049, belonging to the first respondent and insured with the second respondent, was parked in the same lane with no parking indications. Adding to that, the Eicher Vehicle was parked in the no



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parking area. The deceased's vehicle collided with the parked Eicher Vehicle owned by the first respondent from behind. Consequently, the deceased sustained multiple injuries and he succumbed to those injuries on the way to Government General Hospital, Chrompet. At the time of accident, the deceased was working as a Driver in M/s.Nithya Packaging Pvt. Ltd., and was earning a sum of Rs.25,000/- per month and he was the sole breadwinner of the family. The first petitioner is the wife and second and third petitioners are the daughters of the deceased. They are suffering a lot due to the sudden death of the deceased. The accident had happened only due to the rash and negligence of first respondent's driver. The first respondent's vehicle is insured with the second respondent. Therefore, the first respondent being the owner of the Eicher Vehicle bearing Registration No.TN-05-S-5049, second respondent being the insurer of the first respondent's vehicle, are jointly and severally liable to pay compensation of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the petitioners.

Second respondent's case

5.The second respondent filed counter stating that the petitioners are not the legal heirs and dependants of the deceased and they



have not filed any document to prove that they are the sole legal heirs of the deceased. Further, the alleged accident occurred only due to the negligence of the deceased, who drove the vehicle without seeing the parked vehicle and collided with from behind. The deceased has, thus, contributed to the accident. Further it is contended that, the onus is on the petitioners to prove that the accident occurred only due to the negligence of the first respondent's driver in parking without any indication and that the injuries sustained by the deceased were only as a result of the accident. The first respondent's driver, a necessary party, is not impleaded in the Original Petition. The second respondent denied the dependency of the petitioners on the deceased. They further contended that the petitioners have to prove the age, occupation and income of the deceased. Further the petitioners' claim and the rate of interest claimed are excessive. Accordingly, they prayed to dismiss the petition with costs.

6.On the side of the petitioners, the first petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.17 were marked; one Mr.Baskaran, Human Resource Manager at Ms.Nithya Packaging Pvt. Ltd. was examined as P.W.2 and Ex-X.1 (Authorisation letter) was marked; and one Iyappan who was travelling with the deceased as a load man during the



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accident was examined as P.W.3 (Ocular Witness). No oral or documentary evidence was adduced on the side of the respondents. Permission was granted to the second respondent under Section 170 of Motor Vehicles Act, 1988 to raise all the defences on behalf of the first respondent.

7.The Tribunal, after considering the oral and documentary evidence, decided that the accident occurred at 03.20 p.m., in day light; that though the first respondent's vehicle was parked on the causeway without any sign boards, it being day time, the first respondent's vehicle would have been clearly visible and the deceased could have stopped his vehicle or at least tried to avert the accident and thus the last opportunity rule works against the deceased; and that the first respondent's driver is in no way responsible for the accident. Accordingly, the Tribunal attributed negligence to the deceased and dismissed the original petition.

8.Feeing aggrieved with the said dismissal order, the petitioners have preferred this Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988.



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CMP No.28408 of 2023

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9. During the pendency of the Civil Miscellaneous Appeal, the petitioners / appellants filed a petition in CMP No.28408 of 2023 under Order XLI Rule 27(b) read with Section 151 of Civil Procedure Code, 1908, praying to receive the following documents as additional documents:

(1) Inspection Report of Motor Vehicle bearing
Registration No. TN32-J-8070

(2) Final report in FIR No.438 of 2019 dated
19.10.2019

(3) Rough sketch of accident spot

(4) Observation Mahazar

10. This Court has perused the affidavit filed in support of the Civil Miscellaneous Petition and heard the learned counsel for the second respondent. The second respondent has no serious objection to receive the above mentioned documents.



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11.Considering the facts and circumstances of the case, the nature of the documents and in the interest of justice, this Court is inclined to allow the Civil Miscellaneous Petition. Accordingly, CMP No.28408 of 2023 in CMA No.2388 of 2022 is allowed. The petition mentioned documents are received on consent and the same are marked as Ex.P.18 to Ex-P.21.

Arguments

12.This Court has heard Mr.P.Suresh Babu, learned counsel for the appellants and Mr.J.Michael Visuvasam, learned counsel for the second respondent.

13.The learned counsel for the appellants / petitioners has submitted that the driver of the vehicle bearing Registration No.TN-05-S-5049 parked the vehicle in a 'no parking area'. The deceased drove the vehicle with great care and caution. The accident occurred on a busy road. The Police registered First Information Report (Ex-P.1) and filed charge sheet, against the first respondent's driver, who parked the vehicle in the 'no parking area'. He further submitted that to prove the accident, the



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petitioners examined P.W.3-Iyyappan. A conjoint reading of the charge sheet and the evidence of P.W.3 would show that the accident occurred only due to the negligent act of the first respondent's driver. The Tribunal, without considering the FIR and evidence of P.W.3, dismissed the original petition.

14.The learned counsel for the appellants / petitioners further submitted that the Motor Vehicles Act, 1988, is a beneficial legislation and it has to be interpreted in favour of the affected persons. The Tribunal invoked the principle of *res ipsa loquitur* which is incorrect in view of the charge sheet filed against the first respondent's driver. He further submitted that the deceased at the time of accident, earned a sum of Rs.11,550/- per month and Rs.500/- per day as *Batta*. Accordingly, the petitioners quantified a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as compensation. Accordingly, the learned counsel prayed to allow the appeal and award the compensation to the petitioners as prayed for.

15.Per contra, learned counsel appearing for the second respondent / insurance company argued that the accident happened at 03.20 p.m., in day light. Learned counsel invited attention of this Court to



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the motor vehicle report of the two vehicles and submitted that the motor vehicles report would show that the accident happened only due to the rash and negligent act of the deceased. The Tribunal, after considering the entire materials and evidence, has dismissed the original petition and hence, there is no warrant to interfere with the judgment of the Tribunal.

Points for determination

16.The points that arise for consideration in this appeal are as follows:

(i)Whether the accident happened only due to the rash and negligent driving of the deceased?

(ii)Whether the petitioners are entitled to compensation, if so, to what quantum of compensation?

(iii)Whether the Tribunal's order is liable to be interfered with?

17.This Court has considered both sides submissions.



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Discussion and Decision to Point No.(i)

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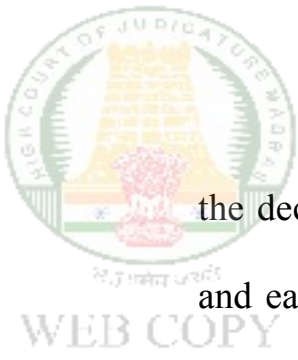
18. Admittedly, the accident occurred at 03:20 p.m. in broad daylight on a busy road, while P.W.3, the load man, was travelling in the vehicle driven by the deceased. P.W.3 deposed that naturally, as a Load man, he sat on the back side of the vehicle and could not directly witness the accident but only know the events that took place immediately after the accident. Hence, his evidence cannot be ignored totally. His evidence would show that the first respondent's vehicle was parked in a no parking area without any safety precaution or indications. Further, the FIR and Charge Sheet have been registered against the first respondent's driver. If the vehicle really had a breakdown or there arose a need with no other resort to park the vehicle on the roadway, the first respondent's driver ought to have taken due care and caution by setting up warning triangle or at least some other sort of proper indication. FIR and Charge Sheet clearly show that no such safety precaution was taken by the first respondent's driver. Perusal of the Accident Information Report of both the vehicles filed as additional type set on the side of the appellants would establish that, the deceased has not tried to avert the accident, as he has collided straight into rear side of the first respondent's vehicle. Hence, the accident



could have been averted if there had been due care and caution on the side of the deceased. Nonetheless, no one would expect a lorry to be parked on the causeway of a busy road, that too in the absence of any due indication. Hence, this Court is of the considered view that both the vehicles contributed to the accident. Considering the facts and circumstances of the case, this Court is of the considered view that the deceased contributed 20% and first respondent's driver contributed 80% of the negligence for the accident. Point No.(i) is answered accordingly.

Discussion and Decision to Point No.(ii) and (iii)

19.P.W.1 deposed that she is the wife of the deceased and 2nd and 3rd petitioners' are daughters of the deceased. To prove the said fact, she exhibited Family Card (Ex-P.8), 2nd and 3rd petitioners' birth certificates (Ex-P.9 and Ex-P.10 respectively), her Aadhar card (Ex-P.11) and Lok Adalat Award declaring the petitioners as Legal Heirs of the deceased(Ex-P.13). This Court perused all these exhibits which clearly establish that the petitioners are the legal heirs of the deceased. P.W.1 in her cross-examination has deposed that the 2nd petitioner has got married and living with her husband. Further deposed that, at the time of accident,



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the deceased was working as a driver in Ms.Nithya Packaging Pvt. Ltd. and earning a sum of Rs.25,000 per month. The Pay Slip was marked as Ex-P.12. Further, P.W.2- Human Resource Manager at Ms.Nithya Packaging Pvt. Ltd vouches for Ex-P.2 and deposed that the deceased had been paid Rs.500 as *Batta* upon his reporting to duty besides the monthly salary of Rs.11,550/- paid through bank transfers.

20.The deceased passed away on the way to the Hospital. The Post-mortem report, marked as Ex-P.3, shows the age of the deceased as 53 years. Ex-P.5 – Family Card, issued in the year 2005, shows the age of the deceased as 40 years. Hence, this Court concludes that at the time of accident, the deceased was 53 years old. This Court has perused Ex-P.12 – Pay Slip which shows the Gross Pay of the deceased as Rs.11,550/-. With Rs.970/-for PF, Rs.87 for ESI and Rs.1,000 for staff advance, a total of Rs.2,057/- is deducted from the Gross Salary rendering the Net Salary as Rs.9,493/-. Further, Ex-P.12 – Pay Slip shows that the deceased had been receiving fixed salary.

21.Though P.W.2 has deposed about payment of *batta*, no documents were produced in that regard. The respondent side also did not



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cross-examine P.W.2 in that regard. It is not out of place to mention here that, in transport field, *batta* allowance to the drivers is a usual practice.

The same is even present in the State owned transport corporations. On a safe assumption that the deceased would have reported to duty at least for 20 days a month, this Court calculates his monthly *batta* allowance at Rs.500 X 20= Rs.10,000/-. With the *batta* allowance, the deceased's monthly income would be Rs.21,550/- (Rs.11,550 + Rs.10,000/- = Rs.21,550/-).

22.Considering the age of the deceased, this Court deems fit to add 10% towards Future Prospects to the monthly income, which would render the monthly income at Rs.23,705/-. Considering that the deceased has 3 dependants, 1/3rd of the monthly income shall be deducted as personal expenses. Thus, the loss of monthly dependency would be Rs.15,804/-. With the appropriate multiplier of 11 for the age of 53 years, the loss of dependency would be Rs.20,86,128/-. In accordance with the guidelines laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi & Ors*** reported in (2017) **16 SCC 680**, the petitioners are entitled a sum of Rs.15,000/- as loss of estate, Rs.40,000/- each as loss of consortium, Rs.10,000/- as transport



charges and Rs.15,000 as funeral expenses. Thus, the total amount would be Rs.22,46,128/-.

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of dependency (Rs.15,804 X 12 X 11)	Rs.20,86,128.00
2.	Loss of Estate	Rs.15,000.00
3.	Loss of Consortium ((Rs.40,000/- X 3)	Rs.1,20,000.00
4.	Transport Charges	Rs.10,000.00
5.	Funeral expenses	Rs.15,000.00
	Total	Rs.22,46,128.00

23.In view of the apportionment of negligence under Point No.(i) *supra*, the second respondent is liable to pay 80% of the above amount *i.e.*, Rs.17,96,902/- to the petitioners as compensation. Further, the second respondent is liable to pay interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Out of the said amount, the first petitioner / wife is entitled Rs.9,96,902/- and 2nd and 3rd petitioners / daughters are entitled Rs.4,00,000/- each. In view of the foregoing discussion, the award of the Tribunal is liable to be set aside and is accordingly, set aside.



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24.In the result,

(i) CMP No.28408 of 2023 in CMA No.2388 of 2022 is allowed. Additional documents are received and marked as Ex-P.18 to Ex-P.21.

(ii) The Civil Miscellaneous Appeal is allowed with costs.

The order dated March 5th, 2022 passed by the Additional Motor Accident Claims Tribunal, Puducherry, in M.A.C.T.O.P.No.47 of 2020 is set aside. Award is passed in favour of the petitioners and against the second respondent. The second respondent / Insurance Company is directed to deposit the award amount of Rs.17,96,902/- (Rupees Seventeen Lakhs Ninety Six Thousand Nine Hundred and Two Only) with interest at the rate of 7.5% per annum from the date of presentation of the claim petition till the date of deposit within a period of eight weeks from today in M.A.C.T.O.P.No.47 of 2020 on the file of Additional Motor Accident Claims Tribunal, Puducherry. Out of the award amount, the first appellant/ first petitioner (wife) is entitled to a sum of Rs.9,96,902/- (Rupees Nine Lakhs Ninety Six Thousand Nine Hundred and Two Only) with



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proportionate interest and costs; second and third appellants / second and third petitioners (daughters) are entitled to Rs.4,00,000/- (Rupees Four Lakhs Only) **EACH** with proportionate interest and costs. On such deposit being made by the second respondent / insurance company, the appellants/ petitioners are permitted to withdraw their proportionate award amount with interest accrued thereon. Appellants / petitioners shall pay the Court Fee for the award amount.

[R.S.M., J.]

[R.S.V., J.]

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK



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LIST OF ADDITIONAL DOCUMENTS MARKED ON THE SIDE OF THE APPELLANTS / PETITIONERS

<i>S.No.</i>	<i>Dated</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	06.09.2019	Ex-P.18	Photostat copy of Inspection Report of Motor Vehicle bearing Registration No.TN32-J-8070
2	19.10.2019	Ex-P.19	Photostat copy of Final Report in FIR No.438 of 2019 on the file of Chrompet Police Station
3	04.09.2019	Ex-P.20	Photostat copy of Rough Sketch of accident spot filed along with final report
4	04.09.2019	Ex-P.21	Photostat copy of Observation Mahazar filed along with final report

[R.S.M., J.]

[R.S.V., J.]

08 / 04 / 2024

To

1.The Additional Motor Accident Claims Tribunal
Puducherry.

2.The Branch Manager
New India Assurance Company Ltd.,
New Street, Puducherry.

3.The District Collector
Government of Puducherry.



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN

CMA NO.2388 OF 2022

08 / 04 / 2024