



C.M.A(MD)No.87 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.04.2024**

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**C.M.A(MD)No.87 of 2024
and
C.M.P(MD)No.1506 of 2024**

M/s. Reliance General Insurance Company
through its Manager,
80 Feet Road, Meenakshi Plaza,
Anna Nagar,
Madurai.

... Appellant/2nd Respondent

Vs.

1.P.Lavanya
2.Minor P.Mohith
3.Minor P.Rithanya
4.P.Amutha
5.P.Palani
6.T.Kalaiyaran
7.C.Prabu

... Respondents 1 to 5/Petitioners



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8.M/s.National Insurance Company Ltd.,
Through its Divisional Manager
7A, North Veli Street,
Madurai – 1

... Respondents 6 to 8/
Respondents 1, 3 & 4

*(Minor Respondents 2 & 3 are represented through
their mother and next friend 1st Respondent herein)*

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 16th August, 2023 passed in M.C.O.P.No.736 of 2021 on the file of the Motor Accident Claims Tribunal/Special District Judge (MACT), Madurai by allowing this appeal.

For Appellant	: Mr.V.Sakthivel
For R1 to R5	: Mr.J.Sankarapandian
For R8	: Mr.R.Rajamani

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is preferred against the Award dated 16.08.2023 passed in M.C.O.P.No.736 of 2021 by the Motor Accident Claims Tribunal/Special District Judge (MACT), Madurai.

2. The 2nd respondent in M.C.O.P.No.736 of 2021 is the appellant herein.



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3.The petitioners/claimants are respondents 1 to 5 herein, who filed the claim petition in M.C.O.P.No.736 of 2021. The respondents 6 to 8 herein are respondents 1, 3 and 4 in the claim petition.

4. This is a case involving an accident between two vehicles whose owners are arrived as the 6th and 7th respondents. The present appeal is preferred by the Insurance Company of one of the vehicles and the learned counsel for the appellant indicated that it is only concerned about apportioning the negligence as between the drivers of the two vehicles. This Court is further informed that the 6th and 7th respondents remained ex-parte before the Tribunal. Inasmuch as no issue touching upon the liability issue is involved in this case, this Court dispenses the need to implead the legal heirs of the 6th respondent and also need to issue any notice to the 7th respondent.

5. For the sake of convenience, the parties arrayed in M.C.O.P.No. 736 of 2021 are adopted hereunder.



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6. The brief facts of the case:

On 25.11.2020 the deceased Prabu was travelling from Chennai to Madurai in a car bearing registration number TN 64 K 3467, which was driven by the 3rd respondent observing traffic rules. On the same day at about 1.00 hours while the car was nearing Viralimalai Toll Plaza in Trichy to Madurai National Highway road, from south to north, the car hit behind a parked lorry bearing registration number TN 12 AD 8564 without switching on the danger light and without following the traffic rules. Due to the impact, the deceased Prabu sustained multiple grievous injuries and died on the spot. The offending lorry was owned by the 1st respondent and insured with the 2nd respondent. The car, in which, the deceased travelled, was insured with the 4th respondent. At the time of accident, the deceased was aged 35 years and he was a MA.,B.Ed., M.Phil.(English) graduate. He was earning Rs.30,000/- by doing real estate business and Rs.20,000/- by doing tuition work. He was recommended for appointment as PG teacher in UC Higher Secondary School. In the meantime, he died in the accident. The petitioners being wife, children and parents of the deceased are depending solely on his income. F.I.R. was registered against the driver of the



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1st respondent's lorry. The offending vehicle was insured with the 2nd respondent. Hence, the petitioners, who are dependants of the deceased Prabu, filed the claim petition seeking compensation of Rs.70,00,000/-.

7. The 2nd respondent/Insurance Company of the lorry TN 12 AD 8564 objected that the accident took place due to rash and negligent driving of the 3rd respondent, who hit the car behind the parked lorry on the extreme left side of the mud road. The lorry was parked on the extreme left at the parking area of the road following the traffic rules with red cautionary lights switched on. The 3rd respondent drove the car without any valid driving licence. Hence, the 2nd respondent, which insurer of the 1st respondent's lorry is not liable to pay any compensation, if any compensation is payable the respondents 3 and 4 are liable to pay the same.

8. The 4th respondent objected that the 1st respondent parked the lorry on the left side of the national highway in a darkened area without following the traffic rules and also without switching on the red lights



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behind the lorry. The 3rd respondent had driven the car by observing the traffic rules on the highway and only because of the parked lorry in the darkened area the accident occurred. F.I.R. was registered against the 1st respondent for his negligent act and after investigation, the police filed the charge sheet against the 1st respondent. So, there is no fault on the 3rd respondent, thereby, the 4th respondent is not liable to pay compensation.

9. Before the Tribunal both sides adduced oral and documentary evidence. Petitioners examined two witnesses as P.W.1 and P.W.2 and marked 15 documents as Ex.P.1 to Ex.P.15. On the side of the respondents, R.W.1 was examined and Ex.R.1 & Ex.R.2 were marked. After hearing both and after considering the evidences, the Tribunal has held that the accident happened due to rash and negligent driving of the driver of the 1st respondent and awarded Rs.32,59,000/- to the petitioners with interest and cost and directed the 2nd respondent to pay the award amount. The Tribunal also held that the accident was not occurred due to negligence on



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the part of the 3rd respondent and hence, the petition was dismissed in respect of respondents 3 and 4.

10. Aggrieved by the said award, the 2nd respondent has preferred this Civil Miscellaneous Appeal.

11. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

12. It is the main contention of the counsel for the appellant/ 2nd respondent Insurance Company is that the 3rd respondent had driven the car in a rash and negligent manner with high speed and hit behind the 1st respondent's vehicle, which was parked on the left side of the mud road and hence, the 3rd respondent is responsible for the accident. The learned counsel for the petitioners contended that the 1st respondent's lorry was parked at a dark place on the left side of the National Highway, that too without danger light switched on.



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13. On perusal of records, it is clear that the accident had taken place at the odd hours of 25.11.2020, i.e., at about 1.00 hours on 25.11.2020. And going by the case of the Insurance Company, the offending lorry was parked and was stationary at the time of accident. Even if this version of the accident is considered as accepted, then the issue is whether the parking lamps were at least switched on and whether there is a person possessing a driving licence in the driver's seat. At this juncture, it is appropriate to mention here the provisions of Sections 122 and 126 of the Motor Vehicles Act.

“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 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



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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.”

14. So, under Section 122 of the Motor Vehicles Act, parking a motor vehicle in a public road, no matter which part of the day, is considered an obstruction as would cause inconvenience to the other road users and prohibits it and Section 126 of the Act prohibits parking a motor vehicle unless a licensed driver is there in the seat. In this case, the petitioners/claimants' case the 1st respondent's container lorry was parked in darkness on the left side of the road without any evidence that the parking lamps were switched on. Hence, it is incumbent on the appellant/2nd respondent Insurance Company to place contra material against the version of the petitioners. On perusal of the records, the 1st respondent/owner of the offending lorry remained ex-parte and the 2nd respondent Insurance Company has not taken effective steps to examine the driver of the offending lorry to prove the contra. Admittedly, the driver of the lorry was not examined nor there is no material placed by the



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2nd respondent/Insurance Company to show that there were parking lamps switched on and there was a person duly licensed to drive the vehicle was in the driver seat or offending lorry was stopped due to mechanical fault. Therefore, the negligence on the part of the driver of the offending lorry is evident and proved by the petitioners/claimants. There is no negligence on the part of 3rd respondent for the accident. So, the appellant/ 2nd respondent/Insurance Company is liable to pay compensation.

15. The next contention raised by the appellant/2nd respondent Insurance Company is that the Tribunal fixed the notional income on the higher side. On perusal of records, though the petitioners stated that the deceased was aged 35 years and being MA., B.Ed., M.Phil. (English) graduate, the deceased was earning Rs.30,000/- by doing real estate business and Rs.20,000/- by doing tuition work, but no evidence was adduced on the petitioners' side. In the absence of any evidence, the Tribunal has notionally fixed the income of the deceased at Rs.15,000/- per month. In view of the settled proposition in the Sarla Verma case and also by the Division Bench of this Court has held in 2019(1) TNMAC 54 that the



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notional income of the deceased has to be fixed after applying the inflation index, the notional income fixed by the Tribunal is not on the higher side and hence, this court does not warrant of any interference with the notional income fixed by the Tribunal. In other respects, there is no objection raised by the appellant/2nd respondent Insurance Company in respect of future prospects and other compensation under various heads awarded by the Tribunal. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the Award dated 16.08.2023 passed in M.C.O.P.No.736 of 2021 by the Motor Accident Claims Tribunal/Special District Judge (MACT), Madurai is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

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NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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To

- 1.The Motor Accident Claims Tribunal/
Special District Judge (MACT), Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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